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OVERSIGHT ON THE COMPACT OF FREE ASSOCIATION WITH THE REPUBLIC OF THE MARSHALL ISLANDS (RMI): MEDICAL TREATMENT OF THE MARSHALLESE PEOPLE, U.S. NUCLEAR TESTS, NUCLEAR CLAIMS TRIBUNAL, FORCED RESETTLEMENT, USE OF KWAJALEIN ATOLL FOR MISSILE PROGRAMS AND LAND USE DEVELOPMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON ASIA, THE PACIFIC AND
THE GLOBAL ENVIRONMENT

OF THE

COMMITTEE ON FOREIGN AFFAIRS
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OVERSIGHT ON THE COMPACT OF FREE ASSOCIATION WITH THE REPUBLIC OF THE MARSHALL ISLANDS (RMI): MEDICAL TREATMENT OF THE MARSHALLESE PEOPLE, U.S. NUCLEAR TESTS, NUCLEAR CLAIMS TRIBUNAL, FORCED RESETTLEMENT, USE OF KWAJALEIN ATOLL FOR MISSILE PROGRAMS AND LAND USE DEVELOPMENT

THURSDAY, MAY 20, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ASIA, THE PACIFIC
AND THE GLOBAL ENVIRONMENT,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:10 p.m., in room 2172, Rayburn House Office Building, Hon. Eni F.H. Faleomavaega (chairman of the subcommittee) presiding.

Mr. FALEOMAVAEGA. Today's subcommittee hearing will come to order. This is a meeting of the Committee on Foreign Affairs Subcommittee on Asia, the Pacific and the Global Environment.

The hearing involves oversight on the Compact of Free Association with the Republic of the Marshall Islands, issues referencing the medical treatment of the Marshallese people due to our nuclear testing program, the activities of the Nuclear Claims Tribunal, greater understanding of the forced resettlement to some of these islands and the current use of Kwajalein Atoll and land use development—all these issues put together.

I deeply appreciate the presence of our distinguished witnesses representing the various agencies of the Federal Government.

My good friend and ranking member of this subcommittee, the gentleman from Illinois, will be here later so I will go ahead and begin our hearing this afternoon with my opening statement.

From 1946 to 1958—that is, for some 12 years—the United States conducted 67 nuclear tests in the Marshall Islands in the atmosphere, on the surface and even below the surface to further our national security interests. Those tests destroyed the homes and the lives of hundreds of Marshallese people whose islands remained part of the U.S.-administered Trust Territory of the Pacific Islands.

Following World War II, the United States unilaterally declared these islands of Micronesia to be a strategic trust. Whether or not the United Nations liked it, we grabbed the islands and said they were ours. Today, more than half a century later, the people of the Republic of the Marshall Islands still await adequate redress from the United States for the harm they suffered.

The United States accepted responsibility for the problems caused by the tests in 1986 when the Republic of the Marshall Islands entered into a Compact of Free Association with the United States. Of particular interest to me is the provision of section 177 of the Compact of Free Association, which makes it very clear that the United States recognizes its responsibility, and I quote, "To address past, present and future consequences of the nuclear testing program, including the resolution of the resultant claims."

Afterwards, the United States authorized $150 million under section 177 and additional ex gratia assistance under sections 103, 105 and 224 of the compact to settle claims as determined by the Nuclear Claims Tribunal. Under the compact, the Republic of the Marshall Islands could also seek additional compensation if changed circumstances rendered the settlement manifestly inadequate.

The Nuclear Claims Tribunal determined a settlement amounting to about $2.2 billion. Yet, because the fund created to cover the Nuclear Claims Tribunal recommendation proved grossly inadequate, less than $4 million has actually been awarded.

When the Republic of the Marshall Islands filed a change-of-circumstances petition to gain appropriate compensation from Congress, the previous administrations either never bothered to address the problem or simply opposed the petition based on their contention that the settlement provided in the compact was full and final.

No further action was taken on the petition. And just last month, in response to a suit for just compensation filed by the people of Bikini and Enewetak in the U.S. Court of Claims, the Supreme Court declined to review the case, upholding the lower court's dismissal of the suit.

In my opinion, this lack of action by the United States became especially salient when earlier this month the President's cancer panel concluded,

> "The United States has not met its obligation to provide for ongoing health needs of the people of the Republic of the Marshall Islands resulting from radiation exposure they received during U.S. nuclear weapons testing in the Pacific from 1946 to 1958."

The panel went on to recommend to President Obama,

> "The United States Government should honor and make payments according to the judgment of the Marshall Islands Tribunal."

Unless that recommendation is followed, options may be limited to a congressional reference case, which we will discuss today, though I hope this hearing also helps to spur other good ideas.

Another key issue we will discuss today is a recent rush to move the people of Rongelap back to their atoll before it is fully safe to return, in the shadow of a shameful history of previous attempts to resettle the Marshallese people on their contaminated islands.

As detailed in a series of important articles by Thomas Maier in Newsday last year, the people of Rongelap were resettled on their land in 1957, until they fled in 1985, because the doctors from Brookhaven National Labs who treated them allowed their primary responsibility of addressing medical concerns of the Marshallese to be trumped by the goal of studying the effects of nuclear radiation on the human body.

In other words, these doctors, these so-called experts from Brookhaven Lab, spent more time studying the effects of nuclear exposure and contamination on the Marshallese people than actually giving them proper medical treatment. This is absolutely shameful and without justification. How could these doctors abandon their most consequential responsibility?

I believe that in 1956, a statement made by Mr. Merrill Eisenbud, a senior Atomic Energy Commission official, regarding information that might be gleaned in resettling the Marshallese people is revealing:

> "Now, data of this type has never been available, and while it is true that these people do not live the way that Westerners do, civilized people, it is nonetheless also true that they are more like us than the mice."

This is M–I–C–E, mice.

The United States has obviously made dramatic progress in reducing such blatant racism over the past half century, but when it comes to the people of the Marshall Islands, in my humble opinion, our failure to treat them justly, to honor their sacrifices and now to push them to return to contaminated lands harkens to an uglier period in our history.

The United States continues to ignore and, with indifference, allow the squalid and horrible living conditions of some 12,000 Marshallese men, women and children who currently live on this tiny island called Ebeye. Only 66 acres of land are currently inhabited by these 12,000 people in order to allow the U.S. Government to operate its missile testing facility on the nearby island of Kwajalein.

I just wanted to give an idea to our friends of what it means for 12,000 people to live on 66 acres of land. We made a little comparative view. Guttenberg, New Jersey, is part of the New York City Metropolitan Area with a population density of 56,012 people per square mile. It is the most densely populated incorporated place in the United States and has over twice the density of New York City, which has some 26,403 people per square mile.

This means that the 12,000 people living on 66 acres of this little tiny island, Ebeye, is equivalent to a population density of approximately 116,364 people per square mile. This is more than twice the density of Guttenberg, the most densely populated city in the United States.

The United States regards the Ronald Reagan Ballistic Missile Defense Test Site on Kwajalein Island as vital to our national security. Yet our Government did not meet the most basic needs of the displaced Marshallese people as we built the facilities. We need to do better for the people of Kwajalein, just as we need to do better for the Marshallese people harmed as a result of our nuclear testing program.

I hope that today's hearing and briefing moves us toward meeting our obligations and keeping our promises. We have a new administration in office, one that is committed to reducing the threat posed by nuclear weapons and addressing their broadest impacts. I think it is particularly appropriate, then, that we convene this morning just after the Obama administration's "nuclear spring," and while the Review Conference of the Nonproliferation Nuclear Treaty proceeds.

To his credit, President Obama has done more in the past 2 months to advance the goal of a nuclear weapons-free world than his predecessors did over the previous 30 years. President Obama's important accomplishments—devising a new U.S. Nuclear strategy, completing a nuclear arms control agreement with Russia, convening the nuclear security summit agreement and supporting the South Pacific Nuclear Weapons Free Zone Treaty—deserve our support and appreciation. But if we are to address the full range of problems posed by nuclear weapons, we must also deal with the tragic legacy of our nuclear tests in the Marshall Islands.

Towards that end, I commend Chairman Bingaman of the Senate Energy and Natural Resources Committee, and the senior ranking member, Senator Lisa Murkowski, for their interest and leadership in working to assist the Republic of the Marshall Islands through legislation that would provide supplemental compensation for the impacts of nuclear testing.

They introduced Senate bill 2941, which would create a health care program at affected atolls, require periodic surveys of radiological conditions on Runit Island as well as a National Academy of Science assessment of the health impacts of the testing program. It would also mandate that the Republic of the Marshall Islands' citizens receive the same treatment as U.S. citizens working in our nuclear weapons programs. These are all important matters that should be pursued.

It is my understanding that at yesterday's Senate hearing, the Department of the Interior indicated it did not support the $2 million authorization in the proposed Senate bill. Perhaps our friends from the Office of Insular Affairs of the Department of the Interior will care to elaborate further on this issue.

Ladies and gentlemen, the people of the Marshall Islands have literally sacrificed their lives, their properties, their islands. And even more critically profound, as a result of our Government's nuclear testing program, we caused tremendous suffering among Marshallese men, women, and children due to severe exposure to nuclear radioactive fallout. Women gave birth to monstrous looking babies with no legs, no arms, one eye and high incidences of leukemia and thyroid cancer. It goes on and on. They still have not been given proper treatment.

It is my humble opinion that our Nation owes these people much better treatment than we have given them. This isn't about money. It is about the character of the American people and their leaders and the will to do the right thing. It is about equity and fairness for the sacrifices the Marshallese people made for the success of our country's nuclear testing program. That was very important and critical for our national defense at that time against the nuclear capabilities of the former Soviet Union.

So, with that said, ladies and gentlemen, I purposely wore this tie to this meeting. It has a lot of meaning. It was given to me by my dear friend, a member of the Oneida Nation of the American Indian Tribe. I am an adopted member of the Bear Clan. That is why I have the claw of the bear. Hopefully, I am not going to claw anybody here this afternoon.

This is not an adversarial proceeding. I am looking forward to the statements and also the testimony that will be given today. We have a long list of witnesses to testify at our hearing this afternoon and I want to say again how deeply I appreciate your willingness to take the time to come and be with us to make this hearing a successful one.

[The prepared statement of Mr. Faleomavaega follows:]

COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

STATEMENT OF
THE HONORABLE ENI F.H. FALEOMAVAEGA
CHAIRMAN

before the
SUBCOMMITTEE ON ASIA, THE PACIFIC, AND THE GLOBAL ENVIRONMENT

"Oversight on the Compact of Free Association with the Republic of the Marshal Islands (RMI0: Medical Treatment of the Marshallese People, U.S. Nuclear Tests, Nuclear Claims Tribunal, Forced Resettlement, Use of Kwajalein Atoll for Missile Programs and Land Use Development"

May 20, 2010

From 1946 to 1958, the United States conducted 67 atmospheric nuclear tests in the Marshall Islands to further national security interests. Those tests also destroyed the homes and the lives of hundreds of Marshallese people whose islands remained part of a U.S.-administered, U.N. Trust Territory of the Pacific Islands. Today, more than a half century later, the people of the Republic of the Marshall Islands still await adequate redress from the United States for the harm they suffered.

The United States accepted responsibility for the problems caused by the tests in 1986 when RMI entered into a Compact of Free Association with the United States. Section 177 of the Compact makes it clear that the United States recognizes its responsibility to "address past, present and future consequences of the Nuclear Testing Program, including the resolution of resultant claims." The United States authorized $150 million under Section 177 and additional ex gratia assistance under sections 103, 105 and 224 of the Compact in order to settle such claims, which were to be determined by a Nuclear Claims Tribunal. Under the Compact, RMI could also seek additional compensation if "changed circumstances" rendered the settlement "manifestly inadequate."

The Nuclear Claims Tribunal determined a settlement amounting to $2.2 billion. Yet, only a fraction of a percent of that has actually been awarded because the fund created to cover the NCT recommendation proved grossly inadequate. When RMI filed a changed circumstances petition to gain appropriate compensation from Congress, the previous administration either never bothered to address the problem or simply opposed the petition based on its contention that the settlement provided in the Compact was "full and final." No further action was taken on the petition. And last month, in response to a suit for just compensation filed by the people of Bikini and Enewetak in the U.S. Court of Claims, the Supreme Court declined to review the case, upholding the lower court's dismissal of the suit.

The lack of action by the United States became into especially sharp focus earlier this month, when the President's Cancer Panel concluded, "the U.S. has not met its obligation to provide for ongoing health needs of the people of the Republic of the Marshall Islands resulting from radiation exposures they received during U.S. nuclear weapons testing in the Pacific from 1946-1958." The Panel went on to recommend to President Obama that "The U.S. Government should honor and make payments according to the judgment of the Marshall Islands Tribunal." Unless that recommendation is followed, options may be limited to a Congressional reference case, which we will discuss today, though I hope this hearing also helps spur other good ideas.

Another key issue we will discuss today is a recent rush to move the people of Rongelap back to their Atoll – before it is fully safe to return, and in the shadow of a shameful history of previous attempts to resettle the Marshallese people on contaminated islands. As detailed in a series of important articles by Thomas Maier in *Newsday* last year, the people of Rongelap were resettled on their land in 1957 – until they fled again in 1985 – because the doctors from Brookhaven National Labs who treated them allowed their "primary responsibility to address medical concerns [of the Marshallese to be] trumped by the goal of studying the effects of nuclear radiation on the human body." In other words, these doctors spent more time studying the effects of nuclear exposure upon the Marshallese people than giving them proper medical treatment, behavior that was absolutely shameful and without justification.

How could these doctors abandon their most consequential responsibility? I believe a 1956 statement made by Mr. Merrill Eisenbud, a senior Atomic Energy Commission official, regarding information that might be gleaned in resettling the people of Utrik is revealing. "Now, data of this type has never been available," he said. "While it is true that these people do not live the way westerners do, civilized people, it is nonetheless also true that they are more like us than the mice."

The United States has obviously made dramatic progress in reducing such blatant racism over the past half century. But when it comes to the people of the Marshall Islands, our failure to treat them justly, to honor their sacrifices and now to push them to return to contaminated lands harkens back to an uglier period in our history. The U.S. continues to ignore and treat with indifference the 12,000 Marshallese men, women and children who currently live in squalid and horrible conditions on the tiny island of Ebeye – only 66 acres of barren land – so that the U.S. government can operate its missile testing facility on the nearby island of Kwajalein.

The United States regards the Ronald Reagan Ballistic Missile Defense Test Site on Kwajalein as vital to our national security. Yet our government has not met the most basic needs of the Marshallese people displaced so we could build the facilities. We need to do better for the people of Kwajalein, just as we need to do better for the Marshallese people harmed by our nuclear testing.

I hope that today's hearing and briefing moves us toward meeting our obligations and keeping our promises. We have a new Administration in office, one that is committed to reducing the threat posed by nuclear weapons and addressing their broadest impacts. I think it is particularly appropriate, then, that we convene this hearing just after the Obama Administration's "nuclear spring," and while the Review Conference of the Nuclear Non-Proliferation Treaty proceeds. To his credit, President Obama has done more in the past two months to advance the goal of a nuclear weapons-free world than his predecessors did over the previous 30 years.

President Obama's important accomplishments – devising a new U.S. nuclear strategy, completing a nuclear arms control agreement with Russia, convening the Nuclear Security Summit agreement and supporting the South Pacific Nuclear-Weapon-Free Zone Treaty – deserve our support and appreciation. But if we are to address the full range of problems posed by nuclear weapons, we must also deal with the tragic legacy of our nuclear tests in the Marshall Islands.

It is my understanding that at a hearing yesterday in the Senate Energy and Natural Resources Committee, which covered legislation on the Marshall Islands, the Department of Interior indicated that it did not support the $2 million authorization for medical treatment in the proposed bill. Perhaps our friends from the Office of Insular Affairs at the Department of Interior will elaborate further on this today.

All of us here need to be reminded that for some 12 years at the height of the Cold War – over 60 years ago now – the people of the Marshall Islands sacrificed their lives, their property and their islands so the United States could conduct nuclear testing. Those tests caused tremendous suffering among Marshallese men, women and children. As a result of severe exposure to nuclear fallout, Marshallese women gave birth to babies with no legs or arms, and all the people of the Marshall Islands experienced a high incidence of leukemia and thyroid cancer.

Our nation owes these people far better treatment than we have given them. But this is not about money. It is about equity and fairness for the sacrifices they made to allow this country's nuclear testing program to continue, a program which was critical for our national defense. I sincerely hope that as a result of this hearing, we will find a way to seriously address the many problems that the Marshallese people have suffered with for so long.

Mr. FALEOMAVAEGA. For our first panel this afternoon, we are very pleased to have with us Ms. Frankie Reed, the Deputy Assistant Secretary of the Bureau of East Asian and Pacific Affairs of the Department of State.

I have known Ms. Reed for a number of years. She formerly served as a Chargés d'Affaires for the State Department to the Independent State of Samoa years ago. Now she is the newly-appointed Deputy Assistant Secretary to the Pacific.

Secretary Reed is very familiar with the Pacific region. She served as a diplomat in residence at the University of California at Berkeley, where she lectured and was also responsible for outreach programs at the University of the Pacific Northwest. Ms. Reed was also counsel general and deputy U.S. observer to the Council of Europe and the European Court of Human Rights in Strasbourg, France. She served as deputy chief of mission in Conakry, Guinea, and as deputy chief of mission in Apia, Samoa. Ms. Reed also served as a Pearson fellow, formerly on the staff of the current chairman of the Foreign Affairs Committee, Chairman Howard Berman.

Ms. Reed is a member of the California Bar Association. She received her juris doctorate degree from the University of California at Berkeley and a bachelor's in journalism from Howard University. She has a very impressive background and experience, I might say. I want to thank Ms. Reed for being with us this afternoon.

Also with us as a member of the panel is Mr. Nikolao Pula. Mr. Pula is the first Pacific Islander of Samoan ancestry ever to serve as the director of the Office of Insular Affairs and, in that position, Mr. Pula advises the Secretary of the Interior on operational and administrative matters involving Federal policies in insular affairs.

Before coming to the Department of the Interior, Mr. Pula worked for 11 years on Capitol Hill for Senator Daniel Inouye, former Congressman Fofo Sunia and also served as a staff member on the House Committee on Public Works and Transportation. A graduate of Marist School in American Samoa, he also studied at Brigham Young University in Provo, Utah, and at George Mason University. I am very happy to welcome Mr. Pula.

With us also as a member of the panel is Dr. Steven Messervy, deputy to the commander for research, development and acquisition at the Department of Defense.

Dr. Messervy is deputy to the commanding general for research at the U.S. Army Space and Missile Defense Command, Armed Forces Strategic Command, located at Redstone Arsenal in Alabama. That is quite a distance from the Kwajalein missile base, but I assume that you have a good relationship with the Kwajalein missile base.

He has more than 30 years of experience in the research, development and acquisition business. His doctorate is in systems engineering and operations research. He is a graduate of the Defense Systems Management College program of the U.S. Army Command and General Staff College. He is also recipient of many awards, including the decorations—my gosh, there are so many, I don't have enough time to read them.

I want to welcome Dr. Messervy today.

Also with us is Glenn Podonsky with the Department of Energy. Mr. Podonsky is the chief health, safety, and security officer. He reports directly to the Office of the Secretary of Energy and manages the major staff organizations responsible for health, safety and security policy development. He is also responsible for independent oversight of the environmental safety and health safeguard security. I am glad you are here, Mr. Podonsky. I have a lot of questions to ask you on this.

Mr. Podonsky, we welcome you and look forward to hearing your testimony.

Also with us this afternoon is my distinguished colleague and chairman of our Subcommittee of Foreign Affairs on the Middle East and South Asia, my good friend, the gentleman from New York, Mr. Ackerman. I would like to give him time for his opening statement, if he has one.

Mr. ACKERMAN. Thank you very much, Mr. Chairman. It is good to be with you.

Today's hearing addresses a set of issues that are marked by both clear absolutes and awkward ambiguity. The detonation of a hydrogen bomb is as absolute an act as can be imagined. American nuclear tests literally vaporized entire islands in the Pacific, and the reason for these tests were obvious. The Soviet Union posed a clear and present danger to the United States and the world. Nuclear arms were thought to be the key to peace following the unprecedented blood-letting of World War II. We not only thought we were in the right, but we felt compelled by duty to provide for the defense of ourselves and for others. But behind the absolutes were shades of gray and sometimes the darkness of unaccountable and unfeeling government agents rationalizing what they knew to be wrong, or should have known.

The United States made promises to the people of the Marshall Islands on the basis of science it didn't understand and medical judgments that were, at best, poorly educated guesses. Contracts and agreements and commitments and promises rife with certainty and conviction collapsed and failed in the aftermath of radioactive fallout and contamination.

On an island far away where I was born and have lived all my life, doctors from the Brookhaven National Laboratory on Long Island, working under contract for the United States, assured 250 people that it was safe to return home to Rongelap. What the doctors didn't mention was that the island was still highly radioactive.

In the midst of the Cold War it was easy to rationalize. We were in danger. We needed to know what these new weapons of unprecedented power could do. We had to know how to survive exposure to radiation in the event of a nuclear attack. But in the end, government officials employed to work for the public good, and medical doctors who took an oath to do no harm, sent innocent people to live in the cancer incubation ward of a radioactive danger zone.

The people of the Marshall Islands were treated with contempt, like guinea pigs. There is no denying the responsibility of the United States for this treatment. We tested those nuclear weapons. We irradiated those islands. And, in the end, we bear the responsibility for providing for the people who were displaced or injured by our actions.

The people of Rongelap suffered a 9 percent increase in the cancer rate. That is over 530 cancer victims that can be linked to U.S. nuclear tests. Their suffering and ill health were bad enough, but were astonishingly compounded by a bureaucratic and medical indifference that would make Franz Kafka weep.

Consider the medical treatment the Marshallese received. All 250 of them were given identification numbers and pictures were taken, many of them naked, to be kept on record for the effects of radiation. Exams were d1 yearly, each time with more pictures and more samples of blood and urine. But never were the 250 people whose lives and health were in jeopardy told how severe was their risk as we cooked them in a nuclear soup that we tested every year.

In 2007, the Marshall Islands Nuclear Claims Tribunal, established by the United States until 1988, ruled that the residents of the island will were owed $1 billion in damage awards because of the radioactive fallout that contaminated the island and sickened the residents. The Bush White House refused to pay the claim. The U.S. courts have washed their hands of the matter. What will the Obama administration do? What will we do? Are we absolved?

On the one hand, the United States has provided medical care and spent some $500 million on construction and clearing projects. On the other hand, the responsibility for the loss, all the pain, all the illness caused by the nuclear tests, lies with the United States. And in the end, trying isn't enough. In the end, apologizing isn't enough. There may be no justice in a case like this one. But it does not preclude the United States accepting responsibility for what it did and carrying that responsibility through until the last legitimate claim is satisfied.

We do not hesitate to shame those who delay compensation to victims of Nazi atrocities until they die off or their ranks thin down. Here in this case, without question, there is great shame on us. We took the weak and powerless and made them sick and helpless. And, in the end—if that is the end—it is not a story about them, it is more a story about us.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Ackerman follows:]

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ELTON GALLEGLY, California
DANA ROHRABACHER, California
DONALD A. MANZULLO, Illinois
EDWARD R. ROYCE, California
RON PAUL, Texas
JEFF FLAKE, Arizona
MIKE PENCE, Indiana
JOE WILSON, South Carolina
JOHN BOOZMAN, Arkansas
J. GRESHAM BARRETT, South Carolina
CONNIE MACK, Florida
JEFF FORTENBERRY, Nebraska
MICHAEL T. McCAUL, Texas
TED POE, Texas
BOB INGLIS, South Carolina
GUS M. BILIRAKIS, Florida

YLEEM D.S. POBLETE
Republican Staff Director

MARK C. GAGE
Republican Deputy Staff Director and
Director, Europe and Eurasian Affairs

DOUGLAS C. ANDERSON
Republican Chief Counsel

May 20, 2010

"Oversight on the Compact of Free Association with the Republic of the Marshall Islands (RMI): Medical Treatment of the Marshallese People, U.S. Nuclear Tests, Nuclear Claims Tribunal, Forced Resettlement, Use of Kwajalein Atoll for Missile Programs and Land Use Development"

Rep. Gary L. Ackerman

Subcommittee on Asia, The Pacific and the Global Environment

Today's hearing addresses a set of issues that are marked by both clear absolutes, and awkward ambiguity. The detonation of a hydrogen bomb is about as absolute an act as can be imagined. American nuclear tests literally vaporized entire islands in the Pacific. And the reason for these tests was obvious. The Soviet Union posed a clear and present danger to the United States and to the world. Nuclear arms were thought to be the key to peace following the unprecedented blood-letting of World War II. We not only thought we were in the right, but felt compelled by duty to provide for the defense of ourselves and others.

But behind the absolutes were shades of grey, and sometimes, the darkness of unaccountable and unfeeling government agents rationalizing what they knew to be wrong. Or should have known. The United States made promises to the people of the Marshall Islands on the basis of science it didn't understand and medical judgments that were at best, poorly-educated guesses. Contracts and agreements and commitments and promises rife with certainty and conviction lapsed and failed in the aftermath of radioactive fallout and contamination.

On an Island far away, where I was born and have lived all my live, doctors from the Brookhaven National Laboratory, Long Island, working under contract for the United States, assured 250 people that it was safe to return home to Rongelap. What the doctors didn't mention was that the island was still highly radioactive. In the midst of the Cold War, it was easy to rationalize. We were in danger. We needed to know what these new weapons of unprecedented power could do. We had to know how to survive exposure to radiation in the event nuclear attack. But in the end, government officials employed to work for the public good, and medical doctors, who took an oath to do no harm, sent innocent people to live in the cancer incubation ward of a radioactive danger zone.

The people of the Marshall Islands were treated with contempt, like guinea pigs. And there is no denying the responsibility of the United States for this treatment. We tested those nuclear weapons. We irradiated those islands. And, in the end, we bear the responsibility of providing for the people who were displaced or injured by our actions.

The people of Rongelap suffered a 9 percent increase in the cancer rate; that is over 530 cancer victims that can be linked to U.S. nuclear tests. Their suffering and ill-health were bad enough, but were astonishingly compounded by a bureaucratic and medical indifference that would make Franz Kafka weep. Consider the medical treatment the Marshallese received: – all 250 of them were given identification numbers and pictures were taken, many of them naked, to be kept on record for the effects of radiation. Exams were done yearly, each time with more pictures and more samples of blood and urine, but never were the 250 people whose lives and health were in jeopardy, told how severe was their risk, as we cooked them in a nuclear soup that we tasted every year.

In 2007 the Marshall Islands Nuclear Claims Tribunal, established by the United States in 1988, ruled that residents of the island were owed a one billion dollar damage award because of the radioactive fallout that contaminated the island and sickened the residents. The Bush White House refused to pay this claim. The U.S. courts have washed their hands of the matter. What will the Obama Administration do? What will we do? Are we absolved?

On the one hand the United States has provided medical care, and has spent some $500 million on construction and clearing projects. On the other, the responsibility for all the loss, all the pain, all the illness caused by the nuclear tests lies with the United States. In the end, trying isn't enough. In the end, apologizing isn't enough. There may be no justice in a case like this one. But that does not preclude the United States accepting responsibility for what it did and carrying that responsibility through until the last legitimate claim is satisfied.

We do not hesitate to shame those who delay compensation to victims of Nazi atrocities until they die off and their ranks thin down. Here, in this case, without question, there is great shame on us.

We took the weak and powerless, and made them sick and helpless. And in the end, if that is the end, it's not a story about them; it's a story about us.

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Mr. FALEOMAVAEGA. I thank the gentleman for his most eloquent and profound statement concerning what we are talking about this afternoon.

As I stated earlier, this is not about money. This is really a challenge to the character of our Nation, of the American people and of our leaders to do what is right and to correct the mistakes that we have made in the past and make whole our promises to the people of the Marshall Islands.

I just wanted to share a little bit. I will get to my good friend from Arizona, but this is in reference to the first hydrogen bomb that was exploded in 1954, the first ever in the history of the world. The sad part about it is as I read from the records—and that was indicated and verified—was the fact that, as they were planning for the explosion of this hydrogen bomb, the winds had shifted. The administrators, the scientists and the people responsible for that project knew that the winds had shifted, and yet they went ahead and exploded the bomb.

The explosion of this hydrogen bomb was, according to reports, 1,300 times more powerful than the bombs that we exploded at Nagasaki and Hiroshima against Japan during World War II. I just want to share personal experiences, and I have here a book that is probably one of the best written books, I think. It is called "Day of Two Suns" by Jane Dibblin. She went and recorded the personal testimonies of some of the victims exposed to this explosion in 1954.

It says that one of these people who was there said that he was 14 years old at the time, his sister was 12.

> "The teacher asked us—my sister and I and our two cousins—to cook some rice for the other children. We got ready to do it. Then we saw a bright light and heard a sound. Boom. We were really scared.
>
> "At that time, we had no idea what it was. After noon, something powdery fell from the sky. Only later we were told it was fallout. Hiroko and several cousins went to our village at the end of Rongelap Island to gather some sprouted coconuts. Our cousin climbed a coconut tree and got something in her eyes. So we we sent another one up. The same thing happened to her. When we got home, ours was the main village on Rongelap, it was raining. We saw something on the leaves, something yellow. Our parents asked, What happened to your hair? It looked like we rubbed soap powder all over it. That night we couldn't sleep. Our skin itched so much and on our own feet burned, as if it was hot water. Our hair fell out and we would look at each other and laugh: You are bald, you look like an old man. But really we were frightened and sad."

I could go on and on, but I just wanted to share and give a little sense of human experience as to what happened on that dreadful day when the hydrogen bomb exploded.

I might also mention to my good friends and colleagues that the reason why we decided not to continue our nuclear testing program in the Marshall Islands was because of the nuclear fallout. Fifty thousand square miles—this is how far these nuclear clouds traveled. Some of them came right across the United States and fell.

Strontium-90 was found in the milk products of the States of Wisconsin and Minnesota.

So they said, oh boy, we better do something else. That is what motivated us to say we better change the place where we are going to have our nuclear testing. So we ended up going to Nevada and tested about 1,000 more nuclear bombs, this time underground, but still very deadly.

I am very happy to have my good friends and colleagues joining us.

I recognize the gentleman from Arizona, Mr. Flake, for his opening statement, if he has one.

Mr. FLAKE. I have no prepared opening statement. I thank the chairman for having this hearing. I am anxious to hear the witnesses. I want to thank the Marshallese delegation that is here. I met with them yesterday in my office.

I have developed a soft spot for the Marshall Islands. As many of you know, I spent 1 week there last August on a little island in the Kwajalein atoll and enjoyed my experience immeasurably there. I was treated very well by the Marshallese people, both coming and going.

So I want to thank the chairman for holding this hearing, and look forward to the witnesses. Thank you.

Mr. FALEOMAVAEGA. I want to note for the record that my colleague from Arizona wanted to experience what it means to live on a lonely island by himself, so he decided to go to the Marshall Islands. It is a miracle he came back alive. He wanted to be out there by himself, nobody else, no telephones, no washing machines, nothing. He lived about 1 week, I believe, by himself, catching fish and eating coconuts, just like a native. Congratulations to my good friend from Arizona.

The gentleman from California, Mr. Rohrabacher, for his opening statement.

Mr. ROHRABACHER. Let me note after Mr. Flake had that experience of eating coconuts and living there on that island, he still remained a Republican.

It is my honor to be here today and I am very happy that our schedules happened to mesh, because it is a very busy day. But we should not be too busy for the people of the Marshall Islands. They are a small group of people, but they represent something vitally important to the United States. They represent whether or not the United States takes its commitments seriously, whether or not the United States can be a trusted friend, whether the United States will keep its word.

The Marshall Islands were more than good friends to us. They were incredibly generous to the people of the United States at a time when we really needed it. What I am talking about is the time during the Cold War when the outcome of the Cold War was totally in question and the Russians had detonated nuclear weapons and they were ahead of us in terms of advanced rocketry.

The people of the Marshall Islands not only permitted us, but joined with us and became partners with us in the development of those weapons systems during the Cold War, which I believe deterred a nuclear conflagration between the great powers, which would have resulted in an historic setback for all of humanity. One can only imagine if indeed we did not develop those weapons which deterred that war and we would have slipped into some kind of a conflagration, what it would have done to the future of the human race.

The small group of people that permitted us that knowledge and that ability to develop those technologies were the people of the Marshall Islands. And if we go even today to the Marshall Islands, you will find that even to this day, those people are hosting an American effort to develop our antimissile defense systems, and have been for the last 10 to 20 years.

That is of incalculable value to us. If we have, Mr. Chairman, an antimissile system, that if some lunatic from North Korea someday launches a rocket toward Hawaii or even toward the West Coast of the United States, if we are able to knock it down, the first people we should thank are the people of the Marshall Islands who permitted us to test our systems there and permitted us the ability to develop such technologies. So we have a lot to thank them for.

There is, of course, more than a debt of gratitude. There is a debt of making sure that those people who suffered from these tests in the past are dealt with fairly and we keep our word. I certainly am anxious to work with you, Mr. Chairman, to make sure that those people understand our gratitude and we do what is right.

Thank you very much.

Mr. FALEOMAVAEGA. I thank the gentleman from California for his most eloquent statement, and thank both of our friends on the Republican side for their attendance and their interest in this issue.

We will now have our friends here, the witnesses, testify. Secretary Reed.

STATEMENT OF MS. FRANKIE A. REED, DEPUTY ASSISTANT SECRETARY, BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, U.S. DEPARTMENT OF STATE

Ms. REED. Thank you, Mr. Chairman, and members of the committee. I am honored to appear before you today as Deputy Assistant Secretary of State for East Asia and Pacific Affairs. The United States and the Marshall Islands have a close and special relationship dating back to shortly after the end of the Second World War when the Marshall Islands became part of the U.N. Trust Territory of the Pacific Islands under the administration of the United States.

In 1986, the Republic of the Marshall Islands gained full independence and entered into a Compact of Free Association with the United States. The compact, which was amended in 2003, provides the framework for much of our bilateral relations, and its provisions ensure the security of the Marshall Islands and contribute to the security of the United States.

Since achieving independence, the Marshall Islands has developed its own style of democracy and has proved itself a steadfast friend and supporter of the United States. Its government has an excellent voting affinity with the United States in the United Nations, and shares our position on other important international issues.

Many Marshallese citizens are bravely in American military units conducting operations in Afghanistan, Iraq and elsewhere. In December 2008, U.S. Army Staff Sergeant Solomon T. Sam, a young Marshallese serving in Mosul, Iraq, was killed by wounds sustained from an improvised explosive device. We salute all of these Marshallese members and their families' heroism and sacrifice for the cause of building a more secure world.

The Marshall Islands is host to some 2,000 Americans who work along with about 900 Marshallese at the strategically important U.S. Army Ronald Reagan Ballistic Missile Defense test site at Kwajalein Atoll. Known as USAKA, the base is the second largest employer in the Marshall Islands, after the Republic of the Marshall Islands Government.

The combination of payroll taxes paid by Marshallese American contract employees and other workers account for about 25 percent of the Marshall Islands' total revenue collections each year. USAKA also engages in regular humanitarian and development projects on Kwajalein Atoll.

The United States and the Marshall Islands also has an important economic relationship. The United States is the Marshall Islands' largest trading partner. Under the compact, as amended, the United States provides over $60 million in aid to the Marshall Islands annually.

U.S. Federal agencies operate 22 different government programs in the Marshall Islands. We at the Department of State work closely with all of these agencies, but we have a special working relationship with our colleagues at the Department of the Interior Office of Insular Affairs, which has primary responsibility for implementing the compact's economic provisions to ensure that assistance efforts are appropriately coordinated and implemented with transparency and accountability.

The amended compact includes a trust fund mechanism that will serve as a resource base to the Marshall Islands after annual grant assistance expires in 2023. One of our greatest challenges in our relationship is to promote economic development that will contribute to the long-term financial self-sufficiency of the Marshall Islands.

We enjoy a unique and positive relationship with the Marshall Islands, and we are working to see that the interests of the U.S. Government are advanced, while working in concert with the expressed interests of the Marshallese Government and its people. Additionally, I believe that coordination between the U.S. executive and legislative branches is important to this endeavor, and I am grateful for this opportunity to speak with you today.

I would be glad to respond to any questions you may have. Thank you.

[The prepared statement of Ms. Reed follows:]

Statement of Frankie Reed
Deputy Assistant Secretary
Bureau of East Asian and Pacific Affairs
Department of State

Before the

House Foreign Affairs Committee
Subcommittee on Asia, the Pacific, and the Global Environment

May 20, 2010

Oversight on the Compact of Free Association with the Republic of the Marshall Islands

Mr. Chairman and Members of the Committee, I am honored to appear before you today to testify on our relationship with the Republic of the Marshall Islands.

The United States and the Marshall Islands have a close and special relationship dating back to shortly after the end of the Second World War, when the Marshall Islands became part of the U.N. Trust Territory of the Pacific Islands under the administration of the United States. In 1986, the Republic of the Marshall Islands (RMI) gained full independence and entered into a Compact of Free Association with the United States. The Compact, which was amended in 2003, provides the framework for much of our bilateral relations, and its provisions ensure the security of the Marshall Islands and contribute to the security of the United States.

Since achieving independence, the Republic of the Marshall Islands has developed its own style of democracy and has proved itself a steadfast friend and supporter of the United States. Its government has an excellent voting affinity with the United States in the United Nations and shares our positions on other important international issues. Many Marshallese citizens serve bravely in American military units conducting operations in Afghanistan, Iraq, and elsewhere. In December 2008, U.S. Army Staff Sgt. Solomon T. Sam, a young Marshallese serving in Mosul, Iraq, was killed from wounds sustained from an improvised explosive device. We salute all of these Marshellese servicemembers' and their families' heroism and sacrifice for the cause of building a more secure world.

The Marshall Islands is host to some 2,000 Americans who work along with about 900 Marshallese at the strategically important U.S. Army Ronald Reagan Ballistic Missile Defense Test Site at Kwajalein Atoll. Known as USAKA, the base is the second largest employer in the Marshall Islands after the RMI government. The combination of payroll taxes paid by Marshallese, American contract employees, and other workers, plus other fees, account for around 25 percent of the Marshall Islands' total revenue collections each year. USAKA also engages in regular humanitarian and development projects on Kwajalein Atoll.

The United States and the Marshall Islands also have an important economic relationship. The United States is the Marshall Islands' largest trading partner. Under the Compact as amended, the United States provides over $60 million in aid to the Marshall Islands annually. U.S. federal agencies operate 22 different government programs in the Marshall Islands. We at the Department of State work closely with all these agencies, but we have a special working relationship with our colleagues at the Department of the Interior's Office of Insular Affairs, which has primary responsibility for implementing the Compact's economic provisions, to ensure that assistance efforts are appropriately coordinated and implemented with transparency and accountability.

The amended Compact includes a trust fund mechanism that will serve as a resource base to the Marshall Islands after annual grant assistance expires in 2023. One of our greatest challenges in our relationship is to promote economic development that will contribute to the long-term financial self-sufficiency of the Marshall Islands.

We enjoy a unique and positive relationship with the Marshall Islands, and we are working to ensure that the interests of the U.S. government as well as those expressed by the Marshallese government and its people continue to be reflected in our interactions. Additionally, I believe that coordination between the U.S. executive and legislative branches is important to this endeavor, and I am grateful for this opportunity to testify before you today. I would be glad to respond to any questions you may have.

Mr. FALEOMAVAEGA. Thank you, Secretary.

Mr. Nick Pula from the Office of Insular Affairs.

STATEMENT OF MR. NIKOLAO PULA, DIRECTOR, OFFICE OF INSULAR AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. PULA. Thank you, Mr. Chairman and members of the subcommittee. Thank you for the opportunity to discuss the United States' relationship with the Republic of the Marshall Islands.

The United States entered into a Compact of Free Association in 1986. In 2003, the amended compact provided a total of $1.5 billion in mandatory assistance from 2004 through 2023. Under the amended compact, U.S. Grant funding generally decreases annually, paired with increasing contributions to a trust fund established for the RMI. Earnings from the trust fund are intended to provide a source of revenue for the Government of the RMI when grants expire in 2023.

The amended compact requires the RMI to target funding to six development sectors—education, health, the environment, public sector capacity building, private sector development and infrastructure, with priority given to education, health and infrastructure.

The compact and its subsidiary agreement on fiscal procedures require the U.S.-RMI Joint Economic Management and Joint Financial Accountability Committee, known as JEMFAC, to, one, meet at least once annually to evaluate the progress of the RMI in achieving the objectives specified in the development plans; two, approve grant allocations; three, review required annual reports; four, identify problems; and, five, recommend ways to increase the effectiveness of compact grant assistance.

With regard to public sector infrastructure, JEMFAC has allocated approximately $77 million for the public sector infrastructure since 2004. The use of these funds by the RMI has been well planned, professionally managed, and targeted on the priority sectors of health and education. Sixty percent of the 13,000 students are now enjoying new facilities.

Regarding education, it must be said that despite the significant amount of resources provided for support of the education sector, performance results have been less than satisfactory. According to the compact, emphasis should be placed on advancing a quality basic education system. For the most part, the education sector funds cover salaries and operations.

Affecting the sustainability of education systems are politically popular efforts to implement school meal programs and provide transportation to and from school. Food and ground transportation are increasingly expensive, and, if continued with compact funding, these services will take increasing amounts of money away from basic classroom teaching.

Regarding health, the need to strengthen preventive and primary care and shift emphasis away from secondary and tertiary care has been been recognized by the RMI and health leaders. But due to high incidences of chronic disease, notably diabetes, the RMI's population requires a higher level of sick care than the typical patient population.

As the amended compact moves into its 7th year, annual decrements or decreases in funding mean that funds available to the health sector will diminish.

An important element of the U.S. financial assistance is the trust fund established to contribute a source of revenue to the RMI when annual sector grants cease after 2023. As of March 31, 2010, the market value of total assets of the trust fund for the people of the Republic of the Marshall Islands was $108 million. The trust fund sustained losses in 2008. Since then, most of the losses have been recovered.

The RMI is in a tight fiscal position. Some of the issues include doubled government payrolls since 2000, growing level of subsidies and capital transfers to the state-owned enterprises, and difficulty in serving debt payments. Fiscal reform is imperative.

To its credit, the RMI has created two commissions and committees to propose public sector reform. These are steps in the right direction. The Office of Insular Affairs is fully prepared to provide support to restructuring efforts.

With regard to Rongelap, the Office of Insular Affairs carries out a congressionally mandated role in exercising its necessary right of veto over the use by the Rongelap Atoll local government, or RALGov, of its resettlement trust fund. This past March 30th, the mayor of RALGov council members adopted resolutions committing themselves to the following: One, moving from Mejatto Island by October 1, 2011; two, using approximately $7 million to resettle Rongelap Island; and, three, leaving $10 million in the trust fund's corpus to maintain RALGov's operations after October 1, 2011.

Once all those who choose to go home have done so, the resettlement trust fund can be used to carry out resettlement and to assure the resettlement succeeds.

Regarding Enewetak, the United States and RMI settled all claims—past, present and future—of the government and citizens of the Marshall Islands, which are in a way related to the U.S. nuclear weapons testing program. Nevertheless, Runit Dome remains a point of friction.

Upon request, the Department of Energy staff have from time to time performed limited environmental sampling at Runit Island around Runit Dome. However, the Congress has never assigned the Department of Energy or any other Federal agency or department the responsibility to maintain surveillance of the radiological conditions on Runit Island.

Despite issues of concern that arise for both the Government of the Marshall Islands and the Government of the United States, we anticipate a continuation of relatively good relations between the two nations.

Thank you for the opportunity to testify.

[The prepared statement of Mr. Pula follows:]

STATEMENT
OF
NIKOLAO I. PULA
DIRECTOR
OFFICE OF INSULAR AFFAIRS

BEFORE THE
HOUSE FOREIGN AFFAIRS SUBCOMMITTEE ON ASIA, THE PACIFIC, AND THE GLOBAL ENVIRONMENT

REGARDING
U.S. RELATIONSHIP WITH THE MARSHALL ISLANDS

May 20, 2010

Mr. Chairman and members of the Subcommittee, thank you for the opportunity today to discuss the United States' relationship with the Republic of the Marshall Islands (RMI).

The United States and the RMI entered into a Compact of Free Association in 1986. In 2003, the U.S. Government approved an amended Compact with the RMI, providing a total of $1.5 billion in mandatory assistance from 2004 through 2023. The amended Compact's 20 years of grant assistance is intended to assist the RMI government in promoting the economic advancement and self-reliance of its people. Under the amended Compact, U.S. grant funding generally decreases annually, paired with increasing contributions to a trust fund established for the RMI; earnings from the trust fund are intended to provide a source of revenue for the government of the RMI when the grants expire in 2023. In addition, the annual grant funding is partially adjusted for inflation. The amended Compact requires the RMI to target funding to six development sectors-- education, health, the environment, public-sector capacity building, private-sector development, and infrastructure -- with priority given to education, health and infrastructure. The amended Compact also provides for a Supplemental Education Grant, which takes the place of certain domestic grants previously made by the Department of Education, the Department of Health and Human Services, and the Department of Labor.

The Office of Insular Affairs is responsible for administering and monitoring these grants. The amended Compact's subsidiary agreement on fiscal procedures requires the RMI government to monitor the day-to-day operations of sector grants and activities, submit periodic performance reports and financial statements, and ensure compliance with annual financial audits. In addition, the Compact and its subsidiary agreement on fiscal procedures require the U.S.-RMI Joint Economic Management and Financial Accountability Committee (JEMFAC) to (1) meet at least once annually to evaluate the progress of the RMI in achieving the objectives specified in the development plans; (2) approve grant allocations; (3) review required annual reports; (4) identify problems; and (5) recommend ways to increase the effectiveness of Compact grant assistance. The RMI is also required to conduct annual audits, in compliance with the Single Audit Act, that ensure independent review of its financial position.

Since implementation of the amended Compact in fiscal year 2004, the RMI has focused its Compact resources on the three highest priorities: education, health and infrastructure.

Since fiscal year 2004, the RMI has dedicated 38% of Compact funds to education and 23% to its health care system. The RMI has chosen to use only limited amounts of Compact funds for the environment, public-sector capacity building, and private-sector development sectors. This allocation reflects the priorities of the RMI government and of the amended Compact. JEMFAC has concurred with the RMI decisions. The allocations may change in any future year, although allocations to the infrastructure sector must be at least 30% of annual Compact assistance, with education and health being given priority for infrastructure spending.

Funding priorities are determined each year by the government of the RMI and presented to JEMFAC for concurrence. JEMFAC meets annually to discuss funding priorities and the progress of the RMI. JEMFAC has concurred with allocations proposed by the government of the RMI with regard to approximately 99% of the funds that have been made available since fiscal year 2004.

Public Sector Infrastructure

The Public Sector Infrastructure sector grant is the most visible component of Compact of Free Association financial assistance. The importance of public infrastructure was noted by the Congress, which mandated in P.L. 108-188 that at least 30% of annual Compact funding be dedicated to infrastructure projects.

JEMFAC has allocated approximately $77 million for the Public Sector Infrastructure for the RMI from fiscal years 2004 through 2009. Use of Public Sector Infrastructure Grant funds by the RMI has been well planned, professionally managed, and targeted on the priority sectors of health and education.

Compact-funded infrastructure projects have provided new classrooms for Marshallese children in Majuro and in some of the outer islands since 2004. The result of the RMI's efforts is that about 200 classrooms at 40 public schools have been newly constructed or repaired using Compact infrastructure funds, significantly improving the learning environment of many students in the Marshall Islands. With an annual average of 13,000 students attending 82 public schools, about 60% of all students are now enjoying new facilities including new classrooms, school furniture, administration buildings, improved cafeterias, comfortable dormitories, standard recreational facilities, working toilet facilities, better libraries, and upgraded science and computer labs. Compact-funded education capital improvement projects completed to date provide Marshallese children with better access to education than ever before. These improved learning facilities are part of our joint effort with the RMI to improve the quality of education for all Marshallese students.

The College of the Marshall Islands (CMI) embarked upon a Facilities Master Plan for the College in fiscal year 2007. During fiscal year 2007, CMI received a five-year funding commitment from the government of the RMI in order to implement its Facilities Master Plan. The government of the RMI and JEMFAC agreed to provide $5 million annually over a five-year period, a total of $25 million, from the Compact Infrastructure Grant to support the CMI Facilities Master Plan. This plan is currently in the fourth year of this five-year funding arrangement. As of March 2010 almost $16.7 million has been expended for infrastructure projects at the CMI.

Education

The Ministry of Education is the single largest recipient of both Compact and federal program funds. Despite the significant amount of resources provided for support of the education sector, performance results have been poor. Compact support for elementary and secondary education needs to comply with the Compact goal: "Emphasis should be placed on advancing a quality basic education system." Further, the Office of Insular Affairs recommends that, for purposes of Compact support, "basic education" should be understood as kindergarten through twelfth grade standards-based instruction in four core academic areas; language arts (English and vernacular), math, science, and social studies with integrated, locally relevant career and technical education.

Application of this clear definition could provide needed parameters for the use of these funds, curtailing the expectation of the government of the RMI that Compact funding will take care of all the educational services it would like to provide. For example, the RMI should be encouraged to explore other funding resources to address food, transportation, art, music, and physical education.

In its annual budget call, the government of the RMI establishes budget caps that provide for no growth in government spending. As a result, very similar Education Portfolio budgets are presented to the RMI government year after year. For the most part, the Education Sector funds cover salaries and operations. Kindergarten, curriculum development and assessment, vocational and career training, and teacher training are handled primarily through the Supplemental Education Grant (SEG). As stated above, the demand for educational services is increasing. At the time the Compacts were amended, the RMI mandated instruction from ages 6 – 14 years. However, the government of the RMI now mandates universal kindergarten through grade 12 instruction. The unrealistic strategy for funding education that has evolved is one of an increasing demand for services in the face of limited and decreasing resources.

Further affecting the sustainability of education systems are politically popular efforts to implement school meal programs and provide transportation to and from school. These ancillary services are not being supported through local funds, although they have been initiated through local legislation. Food and ground transportation are increasingly expensive and, if continued with Compact funding, these ancillary services will take increasing amounts of money away from basic classroom teaching.

Health

There is also an increased demand for government-provided health services.

The need to realign services and programs to strengthen preventive and primary care and shift emphasis away from secondary and tertiary care has long been recognized by the RMI Ministry of Health leaders, but this realignment has presented a dilemma that has yet to be resolved by the government as a whole: due to high incidence of chronic disease, notably diabetes, the RMI's population requires a higher level of sick care than a typical patient population. To meet the need for sick care, the RMI consciously chose to upgrade its secondary care facilities in Majuro and Ebeye. To be useful, these upgrades would have to be accompanied by improvements in the quality and breadth of hospital services, in order to decrease the need to send people off island for conditions that could be diagnosed and treated on-island. This, in turn, has increased the demand for financial resources for acute care.

As the Amended Compact moves into its seventh year and beyond, annual decrements or decreases in funding mean that funds available to the health sector will diminish. There is no assurance that government revenues or program income will be sufficient to fill the gap. Belt tightening is almost inevitable and budgetary practices, however improved, cannot stand without closer scrutiny. Continuous strategic planning must become an indispensable part of the Health Ministry's overall operation, and indeed for the Government as a whole, to ensure the solvency of the health system.

Trust Fund

An important element of U.S. financial assistance under the Compact is the trust fund established to contribute a source of revenue to the government of the RMI when annual sector grants cease after 2023. The funds are to be used for the same purposes as the annual sector grants were.

As of March 31, 2010, the market value of total assets of the Trust Fund for the People of the Republic of the Marshall Islands was $108 million. The Trust Fund sustained losses, primarily in 2008, like all institutional investment funds. Since then, most of the losses have been recovered. For the one-year period ending on March 31, 2010, the return was 36 percent. The assets continue to grow with annual contributions by the United States under the Compact, as well as by a subsequent contributor.

The assets are currently invested primarily in exchange traded funds, approximately 35 percent in fixed income funds, 40 percent in U.S. equities, 20 percent in international equities and 5 percent in real estate.

Mounting Fiscal Pressures

Recent fiscal performance indicates a very tight fiscal position for the RMI as a whole. Some of the issues include:

- The Government payroll has approximately doubled since fiscal year 2000.
- There has been a difficulty in meeting the General Fund payroll, Marshall Islands' Social Security contributions, and public service system employee allotments;
- The performance of State-Owned Enterprises (SOE) and the continuing need to find a source of funds to ease the SOE's cash flow is lacking;
- There is a growing level of subsidies and capital transfers to the SOE sector;
- There is a difficulty in servicing debt payments;
- There is an increase in the use of capital project funds for advances to the SOE sector and General Fund purposes.

RMI Fiscal Reform Efforts

A need for a strong fiscal position is reinforced by the programmed declines in Compact grants.

In order to address these constraints, the RMI has created two committees and commissions to propose public sector reform implementation steps. These efforts are important steps in the right direction.

A Comprehensive Adjustment Program (CAP) report was issued by one of the above-referenced committees to the RMI Cabinet in September of 2009. The CAP was prepared by Marshallese for Marshallese. The authors of the CAP addressed the issue of government-wide expenditures and made a clear case that the measures being recommended were absolutely critical to ensure the financial sustainability of the RMI.

As a recent Asian Development Bank-financed study on public sector enterprise reform by Ben Graham points out, successful reform programs need to be driven from within the RMI, not imposed from outside. The study further states that the "RMI's public sector enterprise sector poses increasing systematic risk on the fiscal system and the economy, and this alone warrants reform. On top of this, the fiscal system and the economy are already under major stress on their own and will continue to face severe challenges moving forward."

The Office of Insular Affairs is fully prepared, as appropriate and upon request by the government of the RMI, to provide support to restructuring efforts identified as critical in developing a medium to long term sustainable fiscal position. In the same vein, OIA is not prepared to support Compact funding proposals that may be contrary to reform efforts.

THE ROLE OF THE OFFICE OF INSULAR AFFAIRS IN MATTERS RELATED TO NUCLEAR-AFFECTED LOCATIONS IN THE MARSHALL ISLANDS

Rongelap

The Office of Insular Affairs (OIA) carries out a congressionally mandated role in exercising as necessary a right of veto over the use by Rongelap Atoll Local Government (RALGov) of its resettlement trust fund. OIA will soon instruct RALGov to use its resettlement trust fund for activities at Rongelap Island only. In recent years OIA has agreed to RALGov's use of some of its resettlement funding to assist those members of the Rongelap community who lived elsewhere. The use of a limited amount of funding from the Rongelap Resettlement Trust Fund to assist the dislocated population during the resettlement project phase of the resettlement program was justified and consistent with the terms of the 1992 and 1996 resettlement agreements. However, the use of that trust fund to support individuals or groups located away from Rongelap Island who left of their own volition and continue to choose to remain away, now that Rongelap Island is to be resettled, is inconsistent with (a) the terms of the Resettlement Trust Fund and the resettlement agreements and (b) the prudential management of achieving the Resettlement Trust Fund's primary goals.

More than six years ago, the late Senator Jeton Anjain of Rongelap selected a team of scientists to evaluate whether Rongelap could be resettled. Although recommending that at least some of the food consumed on Rongelap be imported and limited additional potassium treatments of the island's soil, this group of scientists presented conclusions to the Mayor of Rongelap and RALGov Council in Honolulu that it would be safe to return to Rongelap.

Moreover, in public meetings, Cooper Brown, Esq., one of the late Senator Anjain's closest advisors, stated that RALGov had secured more funding for resettlement than he or the late Senator Anjain could have expected. Mr. Brown reported that the late Senator Anjain's greatest fear was that the people of Rongelap would stay away too long and remain on Mejatto Island instead of going home when environmental conditions made resettlement on Rongelap feasible. Therefore, meeting in Majuro this past March 30th, the Mayor and RALGov Council members adopted resolutions committing themselves to the following:

(1) moving from Mejatto Island by October 1, 2011
(2) using approximately $7,000,000 to resettle Rongelap Island and
(3) leaving $10,000,000 in the Trust Fund's *corpus* to maintain RALGov operations at Rongelap Island after October 1, 2011

The late Senator Anjain asked the Congress to provide funds for resettlement but to allow the people of Rongelap and RALGov to manage the resettlement process under terms agreed to in a trust agreement and a resettlement program agreement. The U.S. Government has fulfilled its mutually-agreed-to Compact obligations, and the Rongelap community has made the decision to return.

Every individual within the Rongelap community will have to decide whether to go back home. Once all those who choose to go home have done so, the Resettlement Trust Fund can be used to carry out resettlement and to ensure that resettlement succeeds. If Rongelap Island is not resettled, or if only a small part of the Rongelap community returns to Rongelap Island, after the returned community no longer needs the Trust Fund, its unused portion will be returned to the U.S. Treasury.

Enewetak

OIA for over 30 years has been participating in a congressionally mandated food and agriculture program under which the people of Enewetak receive supplemental foods, replant vegetation and obtain training in agricultural maintenance. However, there remains an outstanding issue between the Enewetak local government and the United States: Runit Island.

The partial clean-up of Enewetak Atoll in the late 1970's resulted in the creation of an above-ground nuclear waste storage site, capped by a dome, at Runit Island. Inside the dome are over 110,000 cubic yards of radioactive material scraped from other parts of Enewetak Atoll. This material is the residue of the U.S. nuclear weapons testing program conducted in the atoll at various times between June 1946 and August 1958.

The United States and RMI settled all claims, past, present and future, of the government and citizens of the Marshall Islands which are based upon, arise out of or are in any way related to the U.S. nuclear weapons testing program. In particular, Article VII of the agreement subsidiary to section 177 of the 1986 Compact of Free Association relieved the United States of all responsibility for controlling "the utilization of areas in the Marshall Islands affected by the Nuclear Testing Program" and placed that responsibility solely with the RMI Government. Nevertheless, Runit Dome has remained for many years a point of friction in the otherwise mutually agreeable, bilateral relationship between Enewetak officials and the United States. Enewetak officials continue to request that a Federal agency maintain surveillance of the radiological conditions on Runit Island, including:

- the safety of land, water and marine life
- the radiological condition of the northern part of the island and
- the structural integrity of the dome

Upon request, Department of Energy staff have from time to time performed limited environmental sampling at Runit Island around Runit Dome. However, the Congress has never assigned the Department of Energy or any other Federal agency or department the responsibility to maintain surveillance of the radiological conditions on Runit Island. Furthermore, the RMI Government, which in 1986 assumed control of and responsibility for all of the territory of the Marshal Islands, determined that Runit Island should remain permanently off-limits for human habitation.

For many years the U.S. Department of Energy has conducted environmental assessments at Bikini, Enewetak, Rongelap and Utrik Atolls and has provided the results of its studies to the RMI Government and the local atoll governments. With their advisors, the atoll governments set all environmental standards and conduct all remedial actions. The Department of Energy takes environmental measurements before and after remedial actions to see if the actions have achieved their goals. In addition, the Department of Energy offers suggestions for remedial actions at the request of the Marshall Islands Government.

Changed Circumstances

In January 2005 the Department of State transmitted to the Congress the Executive Branch's evaluation of the RMI's *changed circumstances* request under Article IX of the agreement subsidiary to Section 177 of the 1986 Compact of Free Association. The RMI Government's submission included, among other things, a request for an enhanced primary, secondary and tertiary health care system to serve all Marshall Islanders for fifty years. The Executive Branch concluded that there was no legal basis for considering additional payments and determined that there was no basis in the Section 177 subsidiary agreement to consider additional claims.

The evaluation included the results of a comprehensive and methodical review of several successive scientific studies of the impact of the U.S. government's nuclear weapons testing program in the northern Marshall Islands. This evaluation highlighted that previous studies had adequately answered questions about the impact of the testing program as those questions related to additional claims for damages resulting from the weapons testing program.

The peoples of Bikini and Enewetak atolls filed suits alleging that the denial of *changed circumstances* by the U.S. government was a breach of its fiduciary duty to provide just compensation to the peoples of Bikini and Enewetak. The Rongelap Atoll Local Government declined to join Bikini and Enewetak. The Bikini and Enewetak cases were dismissed by the U.S. Court of Federal Claims, and this dismissal was affirmed by the U.S. Court of Appeals. On April 5, 2010, the Supreme Court denied a petition for a writ of *certiorari*, without providing a reason.

Despite issues of concern that arise for both the Government of the Marshall Islands and the Government of the United States, we anticipate a continuation of relatively good relations between the two nations.

Mr. FALEOMAVAEGA. Thank you.

Dr. Messervy.

STATEMENT OF STEVEN MESSERVY, PH.D., DEPUTY TO THE COMMANDING GENERAL FOR RESEARCH, DEVELOPMENT, AND ACQUISITION, U.S. ARMY SPACE AND MISSILE DEFENSE COMMAND, U.S. DEPARTMENT OF DEFENSE

Mr. MESSERVY. Thank you, Mr. Chairman, Ranking Member, members of the committee. Thank you for the opportunity to appear before this panel.

Along with the other panel members, my role here today is to provide some insight and answer your questions regarding the missions of the United States Army Kwajalein Atoll and Ronald Reagan Ballistic Missile Test Site, commonly referred to in the Army as USAKA/RTS. The USAKA/RTS installation and test range falls under the operational control of the United States Army Space and Missile Defense Command/Army Forces Strategic Command (U.S. Army SMDC/ARSTRAT).

I serve as the deputy to the commander for research, development, and acquisition at the U.S. Army SMDC/ARSTRAT. In this role, my primary duties and responsibilities include overseeing the basic and applied technology development efforts in the Army Space and Missile Defense Initiatives. Within my assigned responsibilities, management and operation of USAKA/RTS is also under my purview. My appearance before you today is primary to outline the operational missions performed by USAKA/RTS on Kwajalein Atoll in the Republic of the Marshall Islands (RMI).

As you are aware, Kwajalein is the world's largest coral atoll, surrounded by the world's largest lagoon. Eleven of the approximately 100 islands comprising the atoll are designated as defense sites and are provided to the U.S. Government to use for defense purposes by an international executive agreement known, of course, as the Compact of Free Association.

Sophisticated instrumentation and launch equipment are located on eight of these islands and provide mission support and reliable data for ballistic missile and missile interceptor testing, space launch and operations support. Its isolated location uniquely qualifies the Reagan Test Site for supporting rigorous and realistic tests of all missile classes and intercept scenarios, as well as space operations.

Installation capabilities support the range's test and development operations with essential services normally found in a community of about 1,700 people. USAKA employs about 1,000 Marshallese local nationals who make important contributions to the success of Reagan Test Site operations.

Officially established as a test site in October 1960, the range was transferred to U.S. Army control in July 1964. When the RMI was granted independence in 1986, Kwajalein remained an American military enclave.

USAKA/RTS is approaching half a century of successfully supporting ballistic missile testing and has more than 20 years' experience of space operations. USAKA and RTS support three mission areas that are vital to the success of the U.S. ballistic missile defense and space programs.

The first is space operations. RTS supports the U.S. Army's space mission, the U.S. Air Force, National Aeronautical and Space Administration (NASA), space transportation system operations and experiments in both Department of Defense (DoD) and non-DoD satellite launches.

As part of USAKA/RSTRAT's support to the U.S. Strategic Command, RTS conducts space object identification and provides critical coverage on new foreign launches coming from Asia. Its radars support deep space surveillance and contribute near-Earth satellite observations for the space surveillance network.

Given the increasing problem with what is termed as space junk, or fragments of objects destroyed in space which have remained in orbit, the range's tracking capability has been key in predicting possible collisions with U.S. orbiting satellites.

The second area is missile testing. RTS has supported the Missile Defense Agency's long-range, ground-based, mid-course defense program, as well as various theater missile defense systems. RTS has also supported U.S. Air Force intercontinental ballistic missile testing.

RTS supports lagoon impacts, where the reentry vehicles and test articles needed to be recovered, and impacts into the deep ocean area. Air Force hypersonic technology testing and air crew training missions are planned to begin at RTS in the near future.

The third area is space launch. From its position at 9 degrees latitude above the Equator, the Reagan Test Site is a prime geographical launch site for both low Earth and geosynchronous orbits. Since 2000, RTS has supported space launches by Orbital Sciences and Space Exploration Technologies Corporation, known as Space-Ex.

Mr. Chairman and members of the committee, SMDC/ARSTRAT recognizes the role USAKA/RTS has performed in the defense of our Nation. Its missions of space operations, missile testing, and launch operations have provided the U.S. with valuable information and advancements, and we foresee it continuing to play a key role for the Army, the Department of Defense, and other government agencies and our Nation.

I appreciate the opportunity to speak on these matters, and request that my written statement be submitted for the record. I look forward to addressing any questions you might have concerning the mission aspects of the Reagan Test Site.

Thank you.

[The prepared statement of Mr. Messervy follows:]

RECORD VERSION

STATEMENT BY

DR. STEVEN MESSERVY

DEPUTY TO THE COMMANDER
FOR RESEARCH, DEVELOPMENT AND ACQUISITION
U.S. ARMY SPACE AND MISSILE DEFENSE COMMAND/
ARMY FORCES STRATEGIC COMMAND

BEFORE THE

HOUSE COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON ASIA, THE PACIFIC,
AND THE GLOBAL ENVIRONMENT
UNITED STATES HOUSE OF REPRESENTATIVES

SECOND SESSION, 111TH CONGRESS

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NOT FOR PUBLICATION
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HOUSE COMMITTEE ON FOREIGN RELATIONS
SUBCOMMITTEE ON ASIA, THE PACIFIC, AND THE GLOBAL ENVIRONMENT

Dr. Steven Messervy
Deputy to the Commander for
Research, Development and Acquisition
U.S. Army Space and Missile Defense Command/
Army Forces Strategic Command

Introduction

Chairman Faleomavaega, Ranking Member Manzullo, and Members of the Subcommittee, thank you for the opportunity to appear before this panel. Along with the other panel members, my role here today is to provide some insight and answer your questions regarding the missions of the United States Army Kwajalein Atoll and Ronald Reagan Ballistic Missile Defense Test Site, commonly referred to as USAKA/RTS. The USAKA/RTS installation and test range falls under the operational control of the U.S. Army Space and Missile Defense Command/Army Forces Strategic Command (USASMDC/ARSTRAT).

I currently serve as the Deputy to the Commander for Research, Development and Acquisition at the USASMDC/ARSTRAT. In this role, my primary duties and responsibilities include overseeing the basic and applied technology development efforts of Army space and missile defense initiatives. Within my assigned responsibilities at USASMDC/ARSTRAT, management and operation of two test ranges, one of which is the USAKA/RTS range, are also under my purview. My appearance before you today is primarily to outline the operational missions performed by USAKA/RTS on Kwajalein Atoll in the Republic of the Marshall Islands (RMI).

The Unique Location of USAKA/RTS

As you are aware, Kwajalein is the world's largest coral atoll surrounding the world's largest lagoon. Eleven of the approximately 100 islands comprising the atoll are designated as "defense sites" and are provided to the U.S. government to use for defense purposes by an international executive agreement known as the Compact of Free Association. Sophisticated instrumentation equipment comprised of multi-frequency radars, safety, optics, telemetry, and communications, as well as launch support equipment, is located on eight of these islands and provide mission support and reliable data for ballistic missile and missile interceptor testing, space launch, and operations support. Its isolated location in the western equatorial Pacific region uniquely qualifies RTS for supporting rigorous and realistic tests of all missile classes and intercept scenarios, as well as space operations.

Evolution of the Research and Development Partnership with the RMI

The Marshall Islands were controlled by Germany from the 1880s until the onset of World War I, at which time they were seized by Japanese forces. In 1935, Japan began to fortify Kwajalein and other atolls and the Kwajalein Atoll soon became home to an Imperial Japanese Regional Naval Headquarters. In February 1944, the United States gained control of Kwajalein after a hard fought battle with Japanese forces. After the war, Kwajalein became part of the U.S. Trust Territory of the Pacific Islands. Officially established as a test site in October 1960, the range was transferred to U.S. Army control in July 1964. When the RMI was granted independence in 1986, Kwajalein remained an American military enclave, continuing the role it began in 1959 when it was designated the launch site for the Nike-Zeus anti-ballistic missile (ABM) program. USAKA/RTS is approaching half a century of successfully supporting ballistic missile testing and has more than 20 years of space operations experience.

A highly skilled joint government and contractor team, which includes military personnel, government civilians, technical support contractors, and scientists from the Massachusetts Institute of Technology's Lincoln Laboratory, operates and maintains USAKA/RTS. USAKA's installation capabilities support the range's test and development operations with essential services normally found in a community of about 1,700 people. USAKA's support services include housing, food service, medical and dental, schools, child-care, police, fire protection, postal, recreation, and media services. USAKA employs approximately 980 Marshallese local nationals who make an important contribution to the success of RTS operations.

Major Mission Functions of USAKA/RTS

USAKA and RTS support three mission areas that are vital to the success of U.S. ballistic missile defense (BMD) and space programs.

Space Operations

RTS supports the U.S. Army's space mission, the U.S. Air Force, National Aeronautics and Space Administration (NASA) space transportation system operations and experiments, and both Department of Defense (DOD) and non-DOD satellite launches. As part of USASMDC/ARSTRAT's support to the U.S. Strategic Command, RTS conducts space-object identification and provides critical coverage on new foreign launches coming from Asia. Its radars support deep space surveillance and contribute near-earth satellite observations for the Space Surveillance Network. Given the increasing problem with what is termed as "space junk," or fragments of objects destroyed in space which have remained in orbit, the range's tracking capability has been key in predicting possible collisions with U.S. orbiting satellites. These radars provide more than 50,000 tracks of objects per year.

Missile Testing

USAKA/RTS is an ideal location for testing ballistic missile components in multiple phases of flight. RTS has supported the Missile Defense Agency's (MDA) long range Ground-based Midcourse Defense program as well as various theater ballistic missile defense systems. RTS has also supported U.S. Air Force intercontinental ballistic missile (ICBM) testing. RTS supports lagoon impacts, where the re-entry vehicles and test articles need to be recovered, and impacts into the deep ocean area. RTS supported the Defense Advanced Research Projects Agency (DARPA) test of a hypersonic technology vehicle in April and air crew training missions are planned to begin at RTS in the near future. Its isolated location minimizes constraints that exist in heavily populated areas and facilitates radio frequency spectrum coordination and control.

Space Launch

From its position at nine degrees latitude above the equator, RTS is a prime geographic launch site for both low earth and geosynchronous orbits and thereby enables space launch customers to maximize the weight of payloads placed into space. Since 2000, RTS has supported space launches by Orbital Sciences and Space Exploration Technologies Corporation (SPACE-X).

State of the Art Capabilities

The $4 billion RTS state-of-the-art complex of sophisticated radar, optical, and telemetry sensors provides unsurpassed quantitative and qualitative data acquisition. The high-resolution radars provide precision metric and signature data, imaging for deep-space operations, satellite observations, strategic re-entry missions, and multiple-intercept engagement tracking. Optical sensors provide precise optical metric data that are collected on objects both inside and outside the atmosphere using large-aperture optics equipped with visible and infrared sensors. Critical onboard missile information transmitted to the ground is collected via nine geographically dispersed telemetry antennas capable of receiving data over a wide range of frequencies. State-of-the-art ground stations receive, record, and display high data rates at tremendous speeds.

In addition to its instrumentation suite and the advantages of its location, RTS is also an essential asset as it is an integral part of the Pacific Range System, which also includes Vandenberg Air Force Base, California; Kodiak Launch Complex, Alaska; and the Pacific Missile Range Facility (PMRF), Hawaii. RTS possesses a combination of sophisticated radar and optical sensors unmatched anywhere in the world and plays a major role in research, development, test, and evaluation for America's defense and space programs. Its location in the Pacific Ocean makes RTS ideal for full performance testing of BMD systems and support of space launches with favorable safety and environmental conditions.

Conclusion

Mr. Chairman and Members of the Committee, as a component of the Army and DOD team, USASMDC/ARSTRAT recognizes the role USAKA/RTS has performed in the defense of our Nation. Its missions of space operations, missile testing, and launch operations have provided the U.S. with valuable information and advancements. We foresee USAKA/RTS continuing to play a key space surveillance, ballistic missile testing, and space launch platform role for the Army, the Department of Defense, other government agencies, and our Nation.

I appreciate having the opportunity to speak on this matter of interest and look forward to addressing any questions you or the other Committee members may have.

Mr. FALEOMAVAEGA. Thank you.

Mr. Podonsky.

STATEMENT OF MR. GLENN S. PODONSKY, CHIEF HEALTH, SAFETY AND SECURITY OFFICER, OFFICE OF HEALTH, SAFETY AND SECURITY, U.S. DEPARTMENT OF ENERGY

Mr. PODONSKY. Thank you, Mr. Chairman and members of the subcommittee. I want to tell you I appreciate being invited here today to discuss the status of the U.S. Department of Energy's special medical care program in the Republic of the Marshall Islands.

The responsibility for the day-to-day management and operations of the congressionally mandated DOE Marshall Islands Special Medical Care Program rests within the Department of Energy's Office of Health, Safety and Security.

I am here to reaffirm the DOE's unwavering commitment to the successful execution of the program's mandates as established by the Congress. All of us who are involved in managing the Republic of the Marshall Islands program are mindful of our enormous moral and humanitarian responsibility that this demands.

My office assumed operational responsibility for the program 4 years ago to ensure that your mandates are carried out with the professionalism and the compassion they rightfully deserve.

It is a unique program that is responsible for the well-being of Marshallese through delivering high-quality patient care while coordinating logistics, transportation, and environmental monitoring which provides scientific data to support informed decisions regarding resettlements.

Our focus is to provide a program that is responsive to the needs of the beneficiaries and is sustainable over their lifetime. Our medical program is carried out through nationally recognized medical organizations with access to a large network of clinics and physicians that staff the Marshall Islands' clinics and manage the annual examinations conducted throughout the year.

Cancer treatment is provided for all patients needing such treatment, including those living in Hawaii and in the continental United States, with care provided close to their residence.

We are pleased that all of the eligible patients in 2009 that wanted to participate in the program have received their annual comprehensive examinations. Their average age is 65 years, and they reside in 10 atolls, several islands, and seven States within the continental United States and Hawaii.

The program has safe clinic spaces with modern examination equipment and communications on Kwajalein Island and Majuro. The clinics are an important factor in improving day-to-day lives of the Republic of Marshall Islands citizens. They are over 3,000 clinical contacts a year where people call or visit with a problem, to get a test, prescription, or to consult with medical staff. A third of the contacts are by people outside of our program.

Licensed Marshallese physicians and nurses staff the clinics and provide culturally sensitive patient care. We also ask the Marshallese doctors to schedule and donate time to the hospital when they are not seeing DOE patients.

Marshallese-operated whole-body counters are strategically located for additional screenings. This data provides physicians with important information on patient exposure.

Important work is also taking place under the environmental monitoring program that directly benefits the quality of life. These activities are closely coupled to the medical care program. They provide scientifically credible, objective, and peer-reviewed data that the Government of the Marshall Islands can confidently factor into its environmental remediation and resettlement decisions.

The logistics and transportation component of the program has effectively served its programmatic mission and also plays a critical role in fulfilling humanitarian missions. Recently, during the severe drought in Utrok, we went to extraordinary means to obtain transportation for our patients to Majuro and Kwajalein for their annual examinations. We also used our chartered boat to transport a medical vaccination team, deliver water and food, and return some patients that were stranded in Majuro back to Utrok.

To ensure integration of program activities, we instituted a transparent system of managing the program. For example, we made sure that the review and selection of a new contractor was performed in a process involving the Minister of Health, the Senator from Utrok Atoll, along with the Mayor of Rongelap and internationally recognized experts on health care and logistics. All bid packages were provided to panel participants to review and comment.

The terms and conditions of the cooperative agreement we have clearly documented and communicated. We hold formal biannual program reviews. There is significant hands-on DOE management and oversight of day-to-day operations. The DOE program manager has substantial involvement and authority and program direction to ensure congressional mandates are effectively met.

My respective management team and I have embarked on a more aggressive outreach to local communities in partnership with the Republic of Marshall Islands Governments. Our DOE Marshall Islands program manager holds community events and outreach in every community within the continental United States and Hawaii and all locations where we have Marshallese patients to inform them of any changes to the program and to get feedback directly from them in areas where they think improvements are still needed.

Our medical team has also increased the number of community visits within the Marshall Islands. The purpose of these visits is to provide follow-up medical examinations as needed and to discuss questions and issues raised by individuals or the community at large. We promptly communicate the feedback received from the community to our partners within the Government of the Marshall Islands.

The annual program meeting with the Government of the Marshall Islands also provides another forum for us to collaboratively discuss and develop strategies and actions to improve the delivery of services to our patient population.

DOE's commitment to fulfill its mandates established by the Congress for the Marshall Islands Special Medical Care Program is solid. We view our commitments to the Marshall Islands not only as a programmatic responsibility but it is a moral obligation for a better future for the Marshallese.

Thank you, Mr. Chairman. I look forward to your questions.

[The prepared statement of Mr. Podonsky follows:]

STATEMENT OF

GLENN S. PODONSKY
CHIEF HEALTH, SAFETY AND SECURITY OFFICER
U.S. DEPARTMENT OF ENERGY

BEFORE THE

SUBCOMMITTEE ON ASIA, THE PACIFIC AND
GLOBAL ENVIRONMENT
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

MAY 20, 2010

Mr. Chairman and Members of the Subcommittee, I am pleased to be here today to discuss the status of the U.S. Department of Energy (DOE) Special Medical Care Program in the Republic of the Marshall Islands (RMI). Specifically, I am here to provide this Subcommittee with the highlights of program implementation relative to the mandates established by the U.S. Congress. This introduction will be brief, and I have submitted the full document for the record.

Program Overview

The DOE Marshall Islands Special Medical Care Program provides annual medical screening examinations and care for surviving members of the population of Rongelap and Utrik exposed to radiation resulting from the 1954 U.S. nuclear weapons test code-named "Castle Bravo." There were 253 people on Rongelap and Utrik during the test. The Program was formally authorized in Public Law 99-239, the Compact of Free Association Act of 1985 (COFAA), and earlier Public Laws 99-205 and 95-134. In December 2003, COFAA was amended in Public Law 108-188, the Compact of Free Association Amendments Act of 2003.

The responsibility for the day-to-day management and operation of the DOE Marshall Islands Special Medical Care Program is within the Office of Health, Safety and Security. The Program's primary objective is to provide medical and environmental monitoring including comprehensive annual medical screening examinations and cancer treatment to the remaining survivors.

Please allow me to briefly review the Program mission statement. The mission statement serves as the basic principles that my office uses to guide its activities:

- To provide a program that is responsive to needs and sustainable over the lifetimes of the beneficiaries.

- The objectives are:
    - Provide medical screening examinations and cancer treatment consistent with the U.S. standard of health care for the mandated population;
    - Delivery of health care near patients' homes for patients living in the United States;
    - Actively engage community involvement in-country;
    - Delivery of health care in a culturally appropriate manner; and
    - Coordination with other health agencies in RMI to improve overall service.

Highlights of the Medical Care

- Today, 154 individuals participate in the Program for medical screening and cancer treatment. Their average age is about 65 years and they reside on 10 atolls, several islands, and seven States within the continental United States (CONUS) and Hawaii.

- In fiscal year (FY) 2009, 159 eligible patients were located and 136 were scheduled for examinations. Of the 136 patients, 118 received the full comprehensive examination; the remaining 18 scheduled patients were examined in early FY 2010.

- I am happy to report that 99 percent of those patients, who wanted to participate, completed medical screening examinations, including mammograms, in 2009. An annual screening mammogram in the age group of our patients is recommended by national authorities.

- In 2009, almost every patient (99 percent) who wanted to participate completed a thyroid ultrasound examination using portable equipment. The last thyroid cancer was diagnosed more than 25 years ago; the patient population remains concerned regarding continued risk of thyroid cancer and, consequently, we will continue to provide thyroid examinations.

- Approximately 93 percent of the patients who wanted to participate, depending on the time since the last colorectal examination and other risk factors, had a flexible sigmoidoscopy or colonoscopy. Periodic sigmoidoscopy is currently the recommended screening examination for colorectal cancer.

- The Program also performs age- and gender-appropriate medical tests. Medications are provided for a variety of conditions diagnosed by the physicians. Last year we filled about 700 prescriptions. We have also begun providing our CONUS patients a prescription identification card for authorized medicines at a national pharmacy chain.

- Patients living in the Marshall Islands or Hawaii who are suspected of having cancer are referred to medical facilities in Honolulu, with escorts, for diagnosis, treatment, and follow-up. In CONUS, all the referrals to medical facilities are within 50 miles of a patient's home.

- The number, severity, and complexity of referral cases vary widely from year to year. For example, in some years we have had only a handful of referral cases and, in some years, more than 50 referral cases per year. These have included diagnoses of several cancer cases and subsequent referral to leading cancer centers within the United States.

- Fifty percent of the population over the age of 35 years in the Marshall Islands experiences Type 2 diabetes. This average is consistent with the rates shown within our patient populations. It is believed that the increased move away from locally grown foods in the diet to an imported high-fat, high-sugar diet is probably the root cause for the high rate in diabetic patients. Our garden experiments are geared towards finding new nutritious foods to replace the imported foods and, hopefully, reduce the propagation of diabetes.

Please allow me to address the nontangible side of this Program that reflects its heart and soul.

Program Characteristics

The DOE Marshall Islands Special Medical Care Program is unique in many aspects. First and foremost, it touches on pure and basic human desire to overcome challenges and obstacles. We witness that determination firsthand in our interactions with remaining survivors that constitute the core of our patient population. We also witness the same desire to overcome challenges and obstacles in fulfilling our moral obligations by a dedicated staff who serve this Program. This is a shared value among all of us engaged in this important endeavor.

The Program is also unique, as it is ultimately responsible for the well-being of individuals through delivering high-quality patient care, while coordinating logistics, transportation, and environmental monitoring in a geographic area that covers about 120,000 square miles of open water and providing scientific data to support informed decisions regarding resettlements.

To ensure that the services are delivered as effectively and efficiently as possible, the resources, infrastructure, and coordination of all activities are structured and managed as one integrated program. This is also an attempt to further reinforce performance and accountability.

Please allow me to elaborate and provide more details on the significance and resultant benefits that have been realized due to the Program integration.

The success of the DOE Marshall Islands Special Medical Care Program depends on several key, interrelated components. These include:

- A proactive medical component responsive to the needs and requirements of the patient population.

- Objective environmental monitoring and agricultural research studies to characterize current radiological conditions and their potential impact on human health at the Bikini, Enewetak, Rongelap, and Utrik Atolls. The environmental monitoring and agricultural research efforts are closely linked and coupled with the medical component.

- A single point of service for a robust and reliable logistics and transportation network with sufficient capacity to enable safe and timely movement of patients, supplies, equipment, medical personnel, researchers, and technicians.

- And finally, what is needed for all these program elements to function properly is a sound, transparent system of governance that reinforces and strengthens trust, cooperation, and communication among all key stakeholders.

Program Accomplishments

My office has performed a careful self-assessment of the Program's accomplishments relative to each of the program elements. The highlights of the accomplishments include:

***Medical Care Component*:**

- A single, nationally recognized medical organization with access to a large network of clinics and physicians that staff the Marshall Islands clinics and manage the annual examinations conducted throughout the year. Cancer treatment is provided for all patients needing such treatment, including those living in Hawaii and in CONUS, with care provided in close proximity to their primary residence.

- Safe clinic spaces with modern examination equipment and communications are used on Kwajalein Island and Majuro. The clinics are important. For example, there are about 3,000 clinical encounters a year where people call in or visit with a problem, to get a test, prescription, or to consult with medical staff. About half the encounters are by people outside the program mandate and we help them, where possible, or refer them to the national health care system.

- Licensed physicians and nurses that staff the clinics at regular hours and days are supported by a Physician in Charge located at the headquarters of the program medical provider.

- Marshallese-operated whole-body counters are strategically located in order to detect and measure radioactive cesium and to make laboratory determinations for the amount of plutonium deposited in bodies to provide physicians with important information on patient exposures.

Environmental Monitoring and Agricultural Research Studies:

Section 177(b) of COFAA directs a program of radiological (environmental) monitoring by the U.S. Government. To date, the Program has made many significant findings about the movement of radioactive chemicals in an atoll environment, has found ways to effectively block the uptake of radioactive cesium into local food crops, has established facilities to take actual measurements of the uptake of radioactive cesium by people in their natural environment, and provided technical support for resettlement.

The focus of the environmental monitoring is primarily related to:

- Conducting radiological surveys of coral atolls. One outcome of the research is that the radioactive cesium is removed from the environment much faster than its physical half-life would predict, resulting in radiation levels below those calculated using the physical half-life alone; this finding has important implications for resettlement and health.

- Operating a number of permanent radiological monitoring facilities. These facilities are providing essential data and information to help Marshall Islanders make more informed decisions about personal food choices, where they gather food, and for resettlement purposes.

- Support to resettlement programs. Local atoll government contractors implement cleanup programs while DOE scientists provide technical support and conduct radiological surveys to verify the effects of cleanup activities.

A significant amount of important work is taking place under the environmental monitoring program that directly benefits the quality of life. Some of the recent activities conducted, as part of missions to Bikini, Enewetak, and Rongelap Atolls in the Marshall Islands, have included:

- Assessing urinary excretion rates of plutonium from selected volunteers on Enewetak known to be digging in soil looking for copper wiring on the northern islands;

- Performing a visual inspection of Runit Dome;

- Initiating discussions on developing a garden plot on Enewetak and/or Medren Island and collecting associated soil samples for analysis of physical and chemical properties;

- Conducting a pantry-style (local foods) sampling mission to Tufa Island on Rongelap Atoll;

- Sampling tree-crop products on Rongelap Island, including trees around the village and service area, and prospective home sites on other parts of the island;

- Holding discussions with Rongelap Atoll Local Government (RALG) and Pacific International Inc., on treating the village and service area with potassium and onsite selection for construction of new homes;

- Collecting and processing groundwater samples from established wells on Rongelap Island;

- Replanting the Rongelap garden to identify any issues associated with using groundwater as irrigation water for growing vegetables rather than reverse osmosis filtered water or cistern water;

  - The general aim of the garden projects at Rongelap, Bikini and Enewetak (and eventually on Utrik Island) is to develop data on the uptake of the cesium-137 and strontium-90 in leafy vegetables, and other root and grain crops. Such activities will allow the DOE to address future concerns about the potential impacts of changes in diet on exposure conditions in the Marshall Islands. In general, the garden experiments are designed to fill an existing information gap for helping sustain resettlement of the islands by developing updated field data on strontium-90; and

- Developing and initiating plans for continuation of the whole-body counting program on Rongelap Island through 2010.

Rongelap Resettlement:

The following summary points attempt to address a number of key issues related to resettlement of Rongelap Island:

- The radiological situation on Rongelap Island has improved dramatically since the community left the island in 1985.

- RALG contractors have carried out an extensive remediation project that has reduced the dose from external radiation in the main village and service area to negligible levels.

- Individual exposure and risk will largely be controlled by three main factors: (1) the quantity of locally grown terrestrial food consumed; (2) the source of the locally grown food (northern versus southern islands); and (3) how much time a person spends on the interior of the islands, especially in relation to occupancy of the northern islands. The marine exposure pathway is expected to make a very minor (negligible) dose contribution.

- The risk from radiation exposure on Rongelap Island is such that it is more likely than not that there will be zero cancers arising from fallout-related exposures in association with resettlement.

- Rongelap Island is safe for resettlement. This declaration draws upon information derived from radiological surveillance monitoring of workers and the environment at Rongelap over the past decade using cleanup (safety) guidelines adopted by the Marshall Islands Nuclear Claims Tribunal (NCT). The population average effective dose and reasonable maximum exposure at Rongelap is expected to fall below the NCT cleanup standard of 15 millirem per year.

- Some uncertainties in dose estimates do exist when considering potential exposures from periodic use of pantry islands. However, trends in historical monitoring data (1958-84) from Rongelap suggest that the resettled population can continue to consume foods from these islands in much the same way as they did during the 1970-80s without necessarily exceeding the NCT cleanup safety criterion.

- As the people of Rongelap consider resettlement, it is worthwhile noting, as a reference point, that the natural background radiation dose in the Marshall Islands is very low. The dose from exposure to naturally occurring radioactivity, plus nuclear fallout contamination at Rongelap, will actually be lower than the natural background radiation dose in the United States and Europe. These conditions apply everywhere in the Marshall Islands, without additional remediation work being carried out.

Logistics and Transportation Network:

The scope of the logistics component is vast and challenging. These include:

- Transportation for 136 people in-country from their residence to the place of their annual medical screening examination on both Majuro and Kwajalein Islands and to facilitate their stay, including arranging and paying for lodging, providing cash per diem payments for meals and incidentals, and other assistance at U.S. Federal Government rates.

- Support services for the 33 patients residing in the United States.

- Home visits for the few patients who are homebound and cannot travel.

- "Fit-for-travel" medical examinations for the patients' escorts. The logistics provider is the final authority for selecting escorts.

- Payments for travel and housing; medical costs for medical referrals to Honolulu, Hawaii, for in-country patients and their escorts or translators. Similar payments for patients in the United States for travel to regional medical centers within the United States.

- Appropriate short- and long-term living quarters and arrangements when it is medically necessary for a patient to remain for an extended period of time in Honolulu, Hawaii, or other city, as required.

- Arranging and paying for travel and per diem costs of volunteer (unpaid) medical specialists traveling to the Marshall Islands.

- Leasing and maintenance of clinical spaces for medical examinations in-country.

- Purchasing and managing equipment for the two clinics in Majuro and on Kwajalein Island.

- Environmental monitoring travel support including coordination and purchase of airfare, aircraft charters, vessel charters, and lodging west of Honolulu, Hawaii; and scheduling the use of vessels and aircraft to move personnel, supplies, and equipment to and from remote field sites.

- Assisting the environmental monitoring group in recruiting, selecting, training, paying, and providing other travel support for whole-body counter technicians.

- Employing local labor needed to assist in the collection and preparation of agricultural samples; to augment program scientists; and to maintain the Bikini Field Station, Rongelap Camp, and Enewetak Facility.

- Coordinating local labor payroll with local governments and lease payments to landowners where facilities are located.

Transparent System of Governance:

- The terms and conditions of the cooperative agreement are clearly documented and communicated.

- The review and selection of the new contractor was performed in a systematic process involving the Minister of Health and the Senator from Utrik Atoll, along with the Mayor of Rongelap and internationally recognized experts on health care and logistics. All bid packages were provided to all panel participants to review and comment.

- There is significant hands-on DOE management and oversight of day-to-day operations. The DOE Program Manager has substantial involvement and authority in Program direction to ensure legal requirements are effectively met.

- Our medical team makes quarterly "community" visits. The purpose of these visits is to provide follow-up medical examinations, as needed, and to discuss questions and issues raised by an individual or the community at large. We leverage these opportunities to present and update the local community about the medical services available, as well as any trends resulting from environmental monitoring activities.

- The feedback received from the community becomes part of the government-to-government communications, and are also discussed at the annual Program meeting with the Government of RMI.

Resources

- The 2011 budget requests $6.3 million for the Program, the same as the 2010 appropriations. This amount is expected to address planned commitments, with patient care as our number one priority.

Concluding Remarks

- Mr. Chairman and Members of the Subcommittee, DOE's commitment to fulfill its legal requirements for the DOE Marshall Islands Special Medical Care Program in RMI is solid and unwavering.

- The Program enjoys the support of the Department's senior leadership and maintains visibility at the highest levels of the Department. I have personally made two trips to the Marshall Islands and plan to make a third trip in the near future to tour the recent upgrades to our medical facilities.

- We view our commitments to RMI not only as a programmatic responsibility, but as a moral obligation to enhance the lives of a proud people with a rich history and culture that share our own aspirations for a better future. We have leveraged our resources to make a difference in the lives of the people of the Marshall Islands. For example, in the case of a natural disaster, such as the severe drought on Utrik, we went to extraordinary means to obtain transportation for our patients to Majuro and Kwajalein for their annual examinations. We also used our chartered boat to deliver water and food and return some patients that were stranded in Majuro back to Utrik, in addition to transporting patients in Utrik needing to return to Majuro.

- We are constantly exploring ways to ensure that services delivered are of the highest quality, timely, responsive, and delivered in a caring and professional manner. We are committed to delivering quality comprehensive annual examinations to our patients to look for any signs of cancer for early detection and treatment.

- We do not take this responsibility lightly. My management team and I are personally committed to the continued success of this Program.

Thank you for the opportunity to testify before this Committee. I am happy to answer any questions you may have at this time.

Mr. FALEOMAVAEGA. I thank our witnesses for their testimony.

Without objection, all the statements of our witnesses from this panel will be made part of the record; and if they have any additional miscellaneous materials they want to add on to their statements, they will be more than welcome to do so.

The gentleman from New York for his questions.

Mr. ACKERMAN. Thank you very much, and I thank the panel. Thank you for the rundown of what we have and have been and continue to be providing.

Madam Secretary, let me start with you, if I may. Could you give us the state of play of what the outstanding claims are?

Ms. REED. I am sorry. The state of play of the outstanding claims? You mean a figure? I am sorry.

Mr. FALEOMAVAEGA. The Nuclear Tribunal's claim. I think after their work they wanted to give $2.2 billion in claims for the loss of property for all the damage that we caused to the Marshallese people. I think that is the starting point of the question here. What is the status?

I think, as a result of that, we basically rejected the $2.2 billion that the Tribunal had stated in their records as compensation owed to the Marshallese people, right?

Ms. REED. Yes, I believe that sums it. In terms of an exact figure, I would have to get back to you, but we agree with the position I believe that was stated by the Department of Interior.

[The information referred to follows:]

WRITTEN RESPONSE RECEIVED FROM MS. FRANKIE A. REED TO QUESTION ASKED DURING THE HEARING BY THE HONORABLE GARY L. ACKERMAN

There is no authoritative source that provides a single dollar figure for outstanding claims before the Claims Tribunal established by the Marshall Islands. However, in estimation the total balance owed on property damage awards at $2,284,108,436, plus interest due from the dates of the respective awards, for Enewetak, Bikini, Utrik, and Rongelap atolls.

Citing Article IX of the Section 177 Settlement Agreement, the Republic of the Marshall Islands (RMI) submitted a "Changed Circumstances" request to the United States Congress in September 2000, asserting, and seeking additional compensation and remedies for, injuries and losses to the people of the Marshall Islands arising from the U.S. nuclear testing program at Enewatak and Bikini atolls from 1946 to 1958. In its request, the RMI sought over $3 billion in additional compensation and assistance for Tribunal awards for personal injury claims, for loss of land use and hardship, and for atoll rehabilitation, exceeding the amounts provided in the Section 177 Settlement Agreement, occupational safety, nuclear stewardship, and nuclear education.

At the request of the Senate Energy and Natural Resources Committee, the Executive Branch evaluated the RMI's request under the Changed Circumstances provision, the Department of State on behalf of the Executive Branch submitted a report to Congress in January 2005 concluding that the issues raised by the RMI did not qualify as changed circumstances within the meaning of Article IX of the Section 177 Settlement Agreement. We do not consider the $3 billion request an outstanding claim.

Mr. ACKERMAN. And what is that position that we agree with?

Ms. REED. That we rejected the claims, and that this is a full settlement, has already been negotiated.

Mr. ACKERMAN. So what is it now? Remind me. What do we owe the people of the Marshall Islands?

Mr. PULA. I think the 1986 agreement, that was $150 million that was paid at the time. Legally, that is the stand of the United States regarding this. I don't think I can put a value on the claim.

Mr. ACKERMAN. What do the people and entities in the Marshall Islands think we owe?

Mr. PULA. Based on the petition that they provided, it was over $2 billion.

Ms. REED. If I can add, I understand that this is a very sensitive and contentious point in terms of I believe what the Congressman, if I can summarize a bit, is asking, can we place a value on this in terms of the U.S. Government response? And I believe that leads to quite a different issue.

Mr. ACKERMAN. Well, I think that is the issue. If somebody says we owe them $2.2 billion and our point of view is we can't place a value on what we owe you, what is it we think we owe them? Do we owe them anything besides, hey, good luck guys?

Ms. REED. Not at all——

Mr. ACKERMAN. Sorry about the cancer and all the bombs and all?

Ms. REED. I would believe that simply the presentations with my colleagues here that we have made today certainly affirm, in conjunction with the numerous programs that have been in place for many, many years in the Marshall Islands. Initially, 10 years ago, I worked with my colleagues in the interagency group as we put together an office for the negotiations; and some 10 years later I find myself returning and looking at a vast array of measures that have been put in place.

Mr. ACKERMAN. So the status of play is they claim that we owe them a couple of billion dollars; and our response is, huh?

Mr. FALEOMAVAEGA. Will the gentleman yield?

Mr. ACKERMAN. I will yield to anybody. I don't seem to be getting any responses.

Mr. FALEOMAVAEGA. I think the point here is that Congress had to go back and establish a Nuclear Claims Tribunal.

These are non-Marshallese, by the way, that served as members of the Tribunal. They worked their butts off for years taking in the claims. All of that was put together, and the best recommendation from the Tribunal was that our Government owes these people for their loss of property—loss of islands, for that matter—approximately $2.2 billion.

Then we came back and said, that is outrageous. It is too much.

Mr. ACKERMAN. Mr. Chairman, I find it astonishing that you and I are having a hearing, and there is nobody out there. I mean, the lack of even an attempt to really respond to the question, when I think you all out there—I think I see some people out there. I heard all their testimony. We have it in front of us—is that they have these blank looks like they don't know what we are talking about. There seems to be an unbelievable—arrogance isn't even the right word, that, hey, we don't even want to play.

There is no state of play. You claim you owe us $2.2 billion, and so what? We are going to just wait for these people to die, right, that we have given cancer to, that we have taken away their property. We tell them they can reinhabit their island. They have to put down fertilizer before they grow food or scrape the topsoil away. You have no answers for us? Why are you here?

Mr. PULA. Well, if I may, Congressman, the issue, as mentioned by the Deputy Assistant Secretary from State, is, of course, everybody knows. There has been a long history of this. I mean, we can always go back to the time that the Department of Defense, in terms of they did the tests, I mean, the Department of State handling diplomatic relations, the Department of the Interior taking care of the implementation of the Compact, as I testified, and the Department of Energy.

The four of us who are appearing before you today are here based on all the information that has come from the past. In response, not for us to look like we don't have any answers, in your opening statements, I think we all feel the importance that this is not about money.

Mr. ACKERMAN. It is about dignity. You got it right.

Mr. PULA. Absolutely. And when you ask the question, what is the value? We responded we can't put a value on these.

Mr. ACKERMAN. Well, they have put a value on it. And it seems to me that if we know that this is about dignity then there has to be something besides, good luck, fellows, with whatever few years you might have left.

And what they are asking, to come up with a real answer. They put a value on it. Of course, that doesn't fix the problem. You can't unscrew them is the point. But we do compensate people for wrongs that we have committed. And to tell them they can go to the doctor, we are picking up the tab, isn't really the answer.

It is about dignity. That is what it is. It seems to me those people have dignity, and we lack it by pretending that they are not even there anymore. I know we are doing some stuff, and I know we spent half a billion bucks pretending to do the right thing, but they deserve to be compensated, not a trial lawyer's thing. I mean, it is a real case here. I mean, what we did was inhumane and unconscionable. We know it, don't we? Or do we?

My time is up, Mr. Chairman.

Mr. FALEOMAVAEGA. I thank the gentleman from New York.

I just want to note for the record that Congress passed the Radiation Exposure Compensation Act of 1990. In that act, the U.S. Government approved compensation claims of approximately $1.5 billion for claimants who were on site at the Nevada nuclear test sites, those downwind from the testing, uranium mill workers, uranium ore transporters and others working in the radioactive mines in Nevada.

And I am quoting this from my good friend's testimony, Mr. Jon Weisgall. We look forward to his testimony.

The other problem here is what my good friend from New York is saying. We compensated people who were exposed to nuclear radiation in our own country. In Hanover, Washington, the people were compensated $5 billion. So I think the question was quite relevant and very simple: How much should we pay?

The Nuclear Claims Tribunal worked arduously for years to bring about some sense of fairness to their recommendation of $2.2 billion.

Former Attorney General Thornburgh made an observation that the character and the caliber of those who participated in the Nuclear Claims Tribunal was just and unbiased. It was fair and it was not inflated. Their judgments were made in terms of their hearings—countless hearings and meetings that were held with the claimants and the people of the Marshall Islands.

So I just want to note to my good friend from New York, who raised the issue, that we will continue to raise this issue.

The gentleman from Arizona.

Mr. FLAKE. I thank the chairman.

Can you tell me how many survivors who were there for the actual last blast—my understanding is there are a few hundred who are still living at this time? Can somebody answer that?

Mr. PODONSKY. Congressman, Glenn Podonsky from the Department of Energy. We are responsible for providing medical care for what started out as 253 Marshallese, and it is down to 153 from the original, from the atolls that we were responsible for, as spelled out in the legislation.

Mr. FLAKE. As far as medical care, I know there was an issue just a while ago in Hawaii, the Marshallese who are living in Hawaii and had received care in Hawaii under their system. There were some cutbacks in Hawaii, and there was a fear at least—and this may or may not be related to any of the claims or the payments that we are making. Has that issue been settled at all, do you know? There was concern for a while that their treatment wouldn't be coming.

Mr. PODONSKY. For the population that DOE is responsible for, we have had no cutbacks. We have not faltered from our commitments on the population that we are responsible for.

Mr. FLAKE. In terms of resettlement then, someone was mentioning some timetable in terms of some of the resettlement that is going to be happening soon. When is the next movement going to happen in that regard, Mr. Pula?

Mr. PULA. Basically, that we were supporting the wishes of the Mayor, Matayoshi of Rongelap, and the council. The date that has been set or suggested has been I think October 2011 based on the fiscal year.

Mr. FLAKE. October 2011. And approximately how many families would that involve?

Mr. PULA. I think we have to deal with the information that we get from the—we can provide that for you.

In the last several years, there has been some concern of the money being depleted in the trust fund, but we wanted to go back over 10 years and look at the funds or the trust fund and make sure that the intent of it, as was passed by law, that they provide to go back to Rongelap, provided it is safe. And we have had some meetings—I have been there about 4 years ago, 5 years ago—with some of the folks in Rongelap.

Mr. FLAKE. On the Kwajalein Atoll, when I was there last time, you have Kwajalein and then you have Ebeye and then a few smaller islands going forward from there. There has been a breezeway built along that was surveyed by the Corps of Engineers. We were in charge of that process. There is some concern of environmental damage that is being done because you don't have the natural flow of water over the reef into the lagoon. Is that being addressed in any fashion? I am told that there may not have been sufficient attention paid environmentally to the consequences of having this breezeway built. Does anybody want to address that?

Mr. PULA. I can look into it and get back to you with a response on that.

Mr. FLAKE. I just want to echo what has been said in terms of the importance of the Marshall Islands to the United States in terms of our missile testing and what we get out of this relationship, and it is substantial. Ms. Reed mentioned those who are serving in our military. There are a number. And the commitment and number of casualties taken and everything I think is disproportionate to the population of the United States, what has been inflicted and the sacrifices that have been made by the Marshallese in our own military. I know that that is appreciated by everyone here.

And the geography there, everything that we have, the largest lagoon in the world, as was mentioned, the ability to use, with the agreement with the RMI, those islands to do missile testing is invaluable to the U.S. And I hope that we proceed in a way forward that recognizes what a wonderful partnership this is from our side and that we make sure that we fulfill all of our commitments to the Marshallese Government and to the people and to make sure that not just the medical claims, relocation, but everything else is done as we would treat someone who has been a very good friend to us, as they have.

So, thank you, Mr. Chairman.

Mr. FALEOMAVAEGA. I thank the gentleman from Arizona.

It is nothing to boast about, but I am probably the only Member of Congress who has personally visited the sites where we conducted our nuclear testing in the Marshalls. And I also visited the island of Mururoa where the French detonated some 220 nuclear bombs in the atmosphere, on the surface, and below the surface in French Polynesia.

A couple of years ago, I was invited by the President of Kazakhstan to visit ground zero where the Soviet Union exploded its first nuclear bomb in 1949. And guess what? That place is still contaminated to this day. The Soviet Union conducted 450 nuclear explosions in Kazakhstan and, as a result, 1.5 million Kazakhs were exposed to nuclear fallout and nuclear contamination. The horrible sites that I have personally witnessed have deformed children with genetic abnormalities as a result of the nuclear explosions.

Secretary Reed, at that time there was no question that the Marshall Islands were critically important to our overall strategic, military and national security. And for that very reason, rather than exploding bombs in the continental United States, we decided to go to where the population was sparse. These little islands were sparsely populated and far away from our own people here in the continental United States. So a decision was made. Let's go to the Marshall Islands.

In the aftermath of completing our nuclear testing program in the Marshalls and as a matter of our continuing foreign policy relationship with the Marshall Islands, Madam Secretary, do you still consider the Marshall Islands as a very critical and important political relationship with this country?

Ms. REED. In response to the chairman's question, the Marshall Islands, do we still consider it critical in terms of its relationship to this country? Very much so. Secretary Clinton, in her meeting with the President of the Marshall Islands just the day before yesterday, reiterated this and the U.S. commitment to the Marshall Islands, noting the strategic importance and expressing her goodwill in terms of recognizing the many contributions, including that to which Congressman Flake referred in support of U.S. policies, and also noted the support the U.S. receives in the U.N. It is a broad umbrella in terms of the relationship, not only the strategic commitment, in terms of the defense relationship.

Mr. FALEOMAVAEGA. I will come back to you, Madam Secretary.

Mr. Pula, what are the total yearly funds that we give to the Government of the Marshall Islands as part of the Compact of Free Association agreement?

Mr. PULA. The question is total amount?

Mr. FALEOMAVAEGA. Yes. How much do we give the Marshalls to help operate their government?

Mr. PULA. It is around $60 million.

Mr. FALEOMAVAEGA. And how long will this stream of funding continue?

Mr. PULA. The amended Compact goes through 2023.

Mr. FALEOMAVAEGA. And then after 2023 they are on their own?

Mr. PULA. There is a trust fund, as I had mentioned.

Mr. FALEOMAVAEGA. How much is the trust fund?

Mr. PULA. Right now, the last quarter is about $108 million. And there is a decrement of about $500,000 from the operation. It goes into the trust fund as it is being invested throughout.

Mr. FALEOMAVAEGA. So the hope is that, after 2023, the trust funds will be collected and go into their operations?

Mr. PULA. Help them with the operations, yes

Mr. FALEOMAVAEGA. And what is the guesstimate when we look at projecting how much will be in that trust fund come 2023, when we say we no longer have any more financial obligations to the Republic of the Marshall Islands?

Mr. PULA. Congressman, that is a very tough question. Because if we have years like 2008, because it is invested, they lost about $11 million to $12 million. So at the end of 2023, it depends on——

Mr. FALEOMAVAEGA. Do they invest in Wall Street or is there some other source of banking? With all due respect to my friend from New York.

Mr. PULA. Well, they have financial advisors and the folks that invest the money for the trust fund.

Mr. FALEOMAVAEGA. In your best judgment at this point in time, in terms of their overall development, will the Marshall Islands be able to be self-sufficient by the year 2023 in view of the stream of funding that we give them every year to help their government a little?

Mr. PULA. I sure hope so. But, like I said, it is based on how the investment goes.

Mr. FALEOMAVAEGA. So what happens if the investment goes down hill and this $108 million they are going to be depending on every year to draw from disappears?

Mr. PULA. I think that is something that when comes year 2023 we will have to revisit.

Mr. FALEOMAVAEGA. Mr. Messervy, I was very impressed with our missile testing program in Alabama and your connection to our Kwajalein missile base. But I noted with interest not once did you mention Ebeye Island, from which that little island that serves some 1,000 Marshallese people that come and work in Kwajalein every day. Has your Department of Defense ever taken into consideration the plight of the Marshallese people living on Ebeye Island or is this something for which the Department of the Interior is responsible? I am trying to figure out who should be there to help these people, the Marshallese. Twelve thousand Marshallese men, women and children live on 66 acres. I have been there and it is almost just like what my friend from New York says: Tough luck, you are on your own.

Who should be responsible to help these 12,000 Marshallese people who live literally in squalor? It is worse than the ghetto. No water, except what amount of rain that comes to this island.

Mr. MESSERVY. Sir, I can address a couple of things.

I know there have been several projects that the DoD has been involved in that are assistance projects for quality of life both in water and in power where DoD has really arranged and helped many of the people on Ebeye; and we still provide services to them in case of emergencies, et cetera.

Mr. FALEOMAVAEGA. My understanding—and I didn't mean to interrupt you—electricity goes on at Kwajalein Atoll 7 days a week, 24 hours a day. But if you go to Ebeye Island, there are constant outages, immense logistical and structural difficulties.

As I have said, these people really, really are in dire conditions. Is there any way the Department of Defense can give assistance to these people, or is it not your responsibility?

Mr. MESSERVY. I think on a humanitarian—that is my point—is we are providing some of that support. But it is not our responsibility directly to do that. But, as representatives and as good neighbors, we do many of those things. In fact, last year we provided some spare parts and technicians to go up and help restore power on several occasions at Ebeye.

Mr. FALEOMAVAEGA. You know, when I visited Kwajalein, at 4 o'clock every one of these Marshallese people working at Kwajalein needs to be on that boat back to Ebeye. Do you know how that makes me feel? I feel like a criminal, like I am some person not to be trusted because of all the highly classified research and programs in Kwajalein. Are these people terrorists?

How many people live on Kwajalein?

Mr. MESSERVY. Now there is a little less than 2,000.

Mr. FALEOMAVAEGA. 2,000. Do you think that perhaps they can take in some people from Ebeye?

Mr. MESSERVY. I am not prepared to answer that.

[Additional information follows:]

WRITTEN RESPONSE RECEIVED FROM STEVEN MESSERVY, PH.D. TO QUESTION ASKED DURING THE HEARING BY THE HONORABLE ENI F.H. FALEOMAVAEGA

Primarily due to the classified research and test programs that are conducted at the locations' 11 defense sites, US Army Kwajalein Atoll/Reagan Test Site is a military installation with extremely limited access. In addition to the operational requirement to severely limit access, the government and contractor workforce occupy all available housing on the islands of Kwajalein and Roi-Namur.

Mr. FALEOMAVAEGA. Mr. Pula.

Mr. PULA. If I may, Mr. Chairman, the Compact provides about $3.1 million, with inflation adjustment annually, as Ebeye's special needs grant, the funding to improve the infrastructure and delivery of services over there at Ebeye. There is also, within the Kwajalein Atoll, this amount increases to about $5.1 million, plus inflation, annually in 2014.

Mr. FALEOMAVAEGA. Kwajalein Atoll? But the Marshallese don't live on Kwajalein. These are all Americans and contractors.

Mr. PULA. Yes, I know. But I am saying the impact of that, with the $3.1 million that goes into Ebeye to help them with their deliveries.

Mr. FALEOMAVAEGA. You mean the wages, the salaries that are paid to these 1,000 Marshallese?

Mr. PULA. No, no, no. This money goes to Ebeye itself.

Mr. FALEOMAVAEGA. Which raises another question: How much do we pay the Marshallese people working on Kwajalein? How many dollars an hour are we paying the Marshallese workers there at Kwajalein? Could you provide that for the record? I am very curious.

Mr. MESSERVY. Mr. Chairman, we can provide that for the record.

[The information referred to follows:]

WRITTEN RESPONSE RECEIVED FROM STEVEN MESSERVY, PH.D. TO QUESTION ASKED DURING THE HEARING BY THE HONORABLE ENI F.H. FALEOMAVAEGA

In regards to the Chairman's inquiry regarding the salaries of the Marshallese workforce that supports USAKA/RTS, the overall hourly average of the workforce is $7.57. The salaries paid by USAKA support contractors range from a high of $28.74 an hour for highly skilled positions (such as pilots, hospital technicians, and managers) to a low of $3.00 an hour for entry-level unskilled manual labor positions. For reference, per Section number 403 of RMI Public Law, the established minimum wage in the RMI is $2.00 an hour.

Mr. PULA. I also want to note that the Compact provides about $1.9 million as Kwajalein impact funding to be used for purposes of affordable housing of the folks for both Ebeye and the Marshallese communities in the Kwajalein Atoll.

Mr. FALEOMAVAEGA. This is what the Republic of the Marshall Islands agreed to with our Government in a Compact, $1.9 million?

Mr. PULA. Yes. It is a bilateral agreement that we agreed upon.

Also, using this funding, we provide generators, recently purchased, and reverse osmosis machinery were repaired in Ebeye, enabling the island to have a little bit more reliable electricity, and also potable water.

USAID is pre-positioning emergency supplies on Kwajalein to improve response time and efficiency in the event the U.S. Ambassador declares a disaster on Ebeye.

Mr. FALEOMAVAEGA. We didn't have a USAID presence in the Pacific until maybe 3 or 4 weeks ago, after years and years of my complaining and criticizing our foreign policy toward the Pacific, no USAID presence until only a matter of 1 month ago, I believe.

Ms. REED. Right. This is an AID Office of Foreign Disaster Assistance, a representative that sits in the embassy. I am speaking of the Marshall Islands now, Majuro.

Mr. FALEOMAVAEGA. Please, I didn't mean to interrupt you.

Mr. Podonsky, you mentioned that your activities in giving medical treatment to the Marshallese people are under the mandate of the Congress. What is the total amount of appropriations that Congress gives the Department of Energy for addressing the medical needs of the Marshallese?

Mr. PODONSKY. $6.3 million.

Mr. FALEOMAVAEGA. Do you think that is adequate?

Mr. PODONSKY. We have made it as adequate as we can.

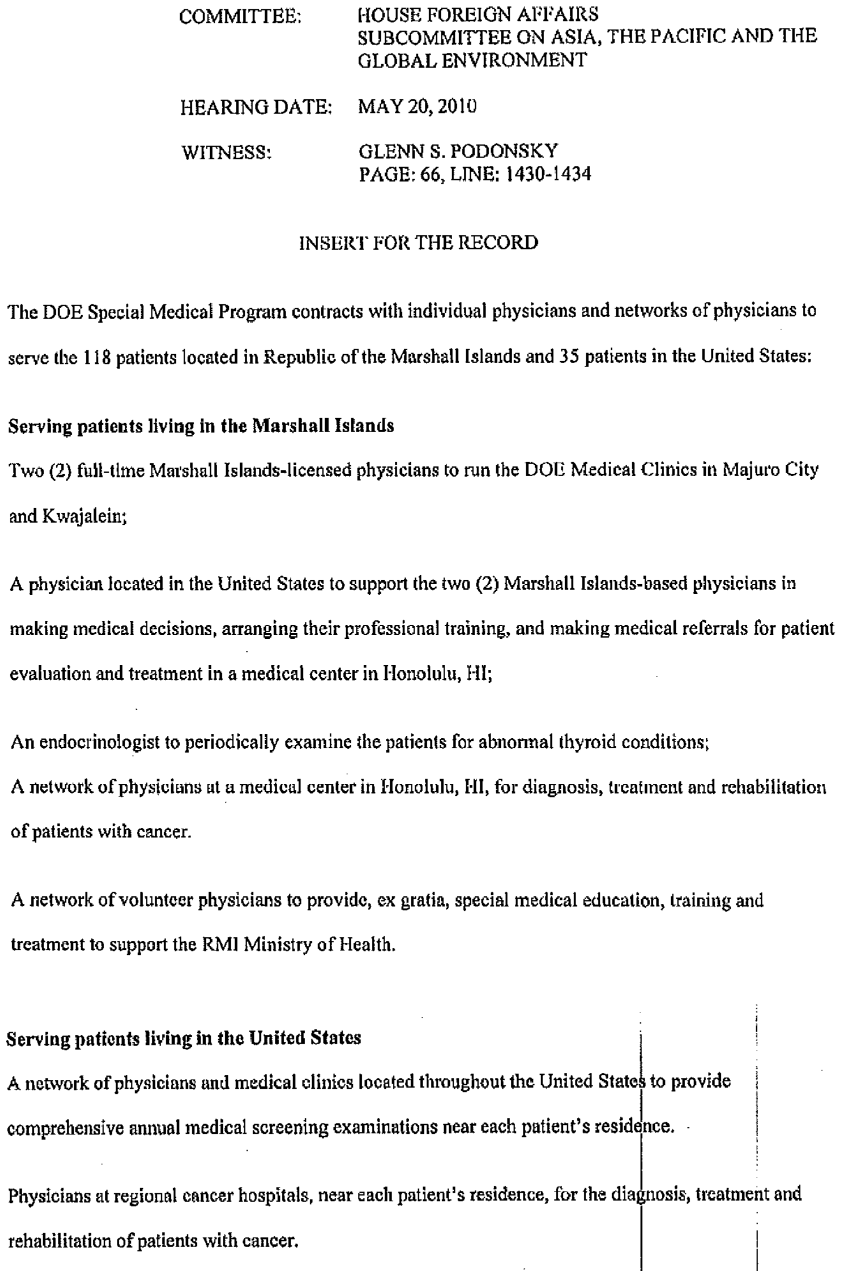
Mr. FALEOMAVAEGA. You made it as adequate as you can. How many doctors does the Department of Energy specifically assign to give help to Marshallese people with medical problems?

Mr. PODONSKY. I am sorry, sir. Could you repeat that? How many doctors do we have?

Mr. FALEOMAVAEGA. Yes. How many doctors do you have going out there and making these assignments and checking the health status of our Marshallese people?

Mr. PODONSKY. I will have to get back to you on how many we have.

[The information referred to follows:]



COMMITTEE: HOUSE FOREIGN AFFAIRS
SUBCOMMITTEE ON ASIA, THE PACIFIC AND THE GLOBAL ENVIRONMENT

HEARING DATE: MAY 20, 2010

WITNESS: GLENN S. PODONSKY
PAGE: 66, LINE: 1430-1434

INSERT FOR THE RECORD

The DOE Special Medical Program contracts with individual physicians and networks of physicians to serve the 118 patients located in Republic of the Marshall Islands and 35 patients in the United States:

Serving patients living in the Marshall Islands

Two (2) full-time Marshall Islands-licensed physicians to run the DOE Medical Clinics in Majuro City and Kwajalein;

A physician located in the United States to support the two (2) Marshall Islands-based physicians in making medical decisions, arranging their professional training, and making medical referrals for patient evaluation and treatment in a medical center in Honolulu, HI;

An endocrinologist to periodically examine the patients for abnormal thyroid conditions;

A network of physicians at a medical center in Honolulu, HI, for diagnosis, treatment and rehabilitation of patients with cancer.

A network of volunteer physicians to provide, ex gratia, special medical education, training and treatment to support the RMI Ministry of Health.

Serving patients living in the United States

A network of physicians and medical clinics located throughout the United States to provide comprehensive annual medical screening examinations near each patient's residence.

Physicians at regional cancer hospitals, near each patient's residence, for the diagnosis, treatment and rehabilitation of patients with cancer.

Mr. PODONSKY. But I will tell you this, Congressman, that we have taken our responsibility for the numbers of people that we have, which I mentioned in my testimony. By an Act of Congress, we only have the original 253, which is now down to 153. And my director of the program, who sits behind me, Dr. Worthington, and my program manager are with me here.

I want to answer your question by saying this. We firmly agree with what the Department of Energy's slice is of responsibility, but we have done more than we are legislatively mandated to do. We have asked our doctors, as well as our arrangements with the Marshallese doctors, to see other patients, not just the DOE patients that we have identified.

We also have on Runit Island taken on responsibility where it used to be a DoD responsibility for the environmental monitoring; and we have our health physicist from Livermore National Laboratory volunteering his time to do that.

We have four agencies represented——

Mr. FALEOMAVAEGA. Mr. Podonsky, I didn't mean to interrupt you but, in your best judgment, do you think Congress is doing its job by giving you sufficient funds to carry out your responsibilities and giving the best medical treatment possible to these people?

Mr. PODONSKY. For the population that I am responsible for, yes. But are we doing our job both in the executive branch and legislative branch? No, sir.

Mr. FALEOMAVAEGA. All right, good. I appreciate that.

For the record, I note that our so-called "experts" during that time seem to have focused primarily on the four atolls, and I am not—maybe Dr. Messervy can help us—saying the amount of radioactive intake of the Marshallese people seems to have been focused on the four atolls. We declassified some of these documents from the Atomic Energy Commission, and found out years later that the entire Marshall Islands Archipelago had a tremendous amount of radioactive exposure. It wasn't just these four atolls. And I am definitely going to pursue this issue; we need to clarify this.

I am going to yield to the gentleman from New York for his second round of questions.

Mr. ACKERMAN. Thank you, Mr. Chairman.

I would like to go back to Mr. Pula for a moment, if I might.

You brought up the trust fund, which expires in 2023, or is scheduled to. Who is the trustee of the trust fund?

Mr. PULA. We have two trust funds. I want to make sure that I get the right—for the Marshall Islands, I think it is the First Hawaiian Bank. At the moment, we are going through a 5-year review where the members of the trust fund committee are looking to change the financial advisors as well as the trustee, the banks.

Mr. ACKERMAN. Who appoints the trustees?

Mr. PULA. We have three members from the United States and two members from the Marshall Islands.

Mr. ACKERMAN. So we are basically in control of the trust fund.

Mr. PULA. The trust fund committee, yes.

Mr. ACKERMAN. So this is American responsibility.

Mr. PULA. Bilaterally, yes.

Mr. ACKERMAN. You mentioned the fund not doing well in 2008. I don't know how well it did in 2009, but my suspicion and gut is that the fund has suffered severe losses, has tremendously underperformed its expectations, and I don't know if it has met its hurdle as far as what it is supposed to be producing in order to be adequate.

I don't know what those numbers are, nor do I pretend to. I don't know if you have that information, but the response to the chairman that we will have to wait until 2023 is not a very good response for those who are supposed to be the trustees of this fund to take care of the needs of those people. By then, it is all over. There is no more trust, and there is no more time to fix it if we wait until the funds run out. And we have to know, as policymakers, as to whether or not there should be adjustments or beefing up of the fund or a replacement of the trustees. And I would like to request, Mr. Chairman, if that is okay with you, that we get a full report on the performance of the fund.

Mr. FALEOMAVAEGA. Without objection.

Mr. ACKERMAN. And we need your recommendations. You are performing your congressional mandate, your legislative mandate. That is fine, and we need that. But you are a lot closer to the ground here on this than we are. With all the issues that we are facing, we are embarrassingly not paying enough attention to this very small place with a small number of people, and it really cries out for attention because of all of the other justice issues that are involved here.

I don't know that we are doing a good enough job. The larger issues that I spoke to in my opening statement and in my first round of questions are nothing personal to this panel, which I am sure, I know, is made up of good and diligent people struggling to do the right thing under the mandates and restraints that you have. But my frustration initially is based on the history and the need for us, as a people, to make right a wrong that we are totally responsible for, where we are the victimizers and they are the victims, that we have negotiated the number of doctors and what we are doing, we have evidently negotiated this bilateral agreement with a thoroughly limited, weaker partner that had no leverage whatsoever in the negotiations and can't necessarily speak with great authority as to what their needs are.

I think, Mr. Chairman, if you and the committee that you chair that I am privileged to sit on would try to come up with recommendations as to the adequacy of what is being provided for the Marshall Islands, that I and others on the committee would stand full square behind you to try to marshal—if I could use that word—the resources——

Mr. FALEOMAVAEGA. If the gentleman would yield, I gladly thank my good friend from New York for his interest in this issue.

As you rightly say, it is not exactly high on our priority list as far as the national interest and the commitments that our country has. But this should not be an excuse for us in our responsibilities to these people and I believe that the contributions they made to our country's overall strategic interests and military interests should not be overlooked. I deeply appreciate the gentleman's interest in this matter and I definitely will pursue this.

Mr. ACKERMAN. Mr. Chairman, it is not just for the strategic value of this place, which is enormous for us, it is very, very important, but for our own self-respect to be able to fix the problems to whatever limited ability that we can. To know that we have put all the resources behind remedying the things that we have caused to go wrong is an obligation that should be a priority, besides any other priority that we might have.

I thank the chairman for calling the hearing and putting this matter before the Congress so that we might remedy this and fix the problems that we have caused and do justice, which is what the people on this panel I know would like to see. But you all have to help us to tell us what is needed so that we might work that out with you and provide that.

Thank you very much, Mr. Chairman.

Mr. FALEOMAVAEGA. I thank the gentleman for his statement and observations on the issue and we look forward to working with him as we pursue this matter.

I have just one or two more questions to our panel, and I deeply appreciate your patience.

Mr. Pula, I indicated earlier the position of the Department of the Interior on yesterday's Senate hearing that your Department does not support the bill's proposal to provide an additional $2 million in funding and authorization in funding, as ex gratia payment, to assist with some of the issues and problems that we have discussed this morning. Maybe you could elaborate on that. If that is the correct way that the hearing was held yesterday, I would appreciate your comment.

Mr. PULA. Thank you, Mr. Chairman.

We did not support that section of the Senate bill, I think, 2941. However, I would like to mention that in the last 2 or 3 years, in the context of appropriation, there is about $1 million that the Office of Insular Affairs received, and we have utilized that money for the four atolls and their health in collaboration with the Marshall Islands.

I think the administration proposed a permanent allocation. However, on an annual basis, we do get about $1 million that is provided for the four atolls in the health issue. So I want to clarify that.

And I also mentioned at the last part of my statement that we were looking forward to working with the Senate committee on any amendments to the legislation that they we had testified yesterday.

Mr. FALEOMAVAEGA. Given the years of experience that you have had in working in this administration as well as with past administrations, do you sense that the perception among some of our national leaders is that perhaps we have given too much money to the Marshallese people?

Mr. PULA. Well, I don't venture to respond on my opinion on that. However, as the administration, we execute the laws that are passed by Congress. A lot of times we want to do more, but because of the constraints upon us based on the laws and the amounts of money that are in there, for example, the changed circumstances—that we were all shocked in the beginning when Congressman Ackerman asked the question about the value. I mean, that issue is so sensitive, and we know that none of us, I think, were there in 1986 when the United States and the Republic of the Marshall Islands in the Compact settled all nuclear claims for $150 million. And I know that the Marshall Islands came back I think maybe in the year 2000 with a changed circumstances to Congress.

In January 2005, the Department of State transmitted to the Congress the executive branch evaluation at the time, that the executive branch concluded there was no legal basis for considering additional payments under section 177.

And the hearing today——

Mr. FALEOMAVAEGA. Mr. Pula, if I might interrupt you. When you say that there was no legal basis, can we consider perhaps a matter of not legal, but moral, basis above any legalese things that these lawyers con up?

Here is my concern. I think one of the circumstances that was claimed by the Marshall Islands Government, the change of circumstance, was the fact that they found out, after declassifying a lot of these documents on our nuclear testing program, that it wasn't just the four atolls. It seems that that was the emphasis of the Atomic Energy Commission and the whole national government; that these are the four atolls that we need to focus on because they are the ones that were exposed. And yet when we declassified the documents, we found out it wasn't just the four atolls. The whole of the Marshall Islands was seriously exposed to nuclear radiation. That was a change of circumstance. And you are saying that our Government refuses to accept that as a change of circumstance.

Mr. PULA. I think that was the 2005 conclusion that that administration had reached.

You have mentioned the changes, where we got into documents. I think we also appreciate you holding hearings regarding this issue. And I would say that, as Congressman Ackerman said, it is something that both the Congress and this administration——

Mr. FALEOMAVAEGA. You know, I just wanted to say please don't take it wrong if sometimes I get a little emotional about this issue, as my good friend John Weisgall and I have been involved with these issues since 1975. I am an old man already. And the bottom line, I am not disparaging any of you personally, but I just honestly believe that the policies that our Government has enunciated—from all previous administrations—have jerked these people around too long with inconsistencies and contradictions. All kinds of excuses we come up with, more than anything, just to say these people don't deserve the money that they should get for the losses of their islands, their property and even their lives. And we are saying that it is too much.

But we can pay other people, our fellow constituents and citizens, exposed to nuclear radiation in Nevada over $1 billion; and probably even more in the Hanover situation in Washington, in the billions.

So I am not saying that this money is not very important, nor that it is too high, by the estimates of some of our so-called "experts." And, as you said earlier Mr. Pula, you can never put any value of money on a person's life. I believe these people have suffered enough, have sacrificed more than their share for the 12-year period that we conducted these tests. They deserve better. That is all I am trying to say. Please help us.

And I am saying the blame is just as much on Congress, as Mr. Ackerman said, for lack of attention. I remember the chiefs of American Samoa who had treaties of session proposing that we have a compact relationship with the United States. It took us 29 years to finally ratify these treaties of session with the Congress of the United States. So I think we all have a sense of appreciation.

Dr. Messervy, Mr. Podonsky, Mr. Pula, Secretary Reed, thank you so much for coming. I still have a good amount of people here who need to testify. And this is not at all to be disrespectful to our good leaders and to those who will be testifying from the Republic of the Marshall Islands, but it is just that a briefing takes on an entirely different procedure.

So we have come to our second panel. Thank you very much for coming. We look forward to working with you and your respective agencies and departments.

For our second panel, we have Dr. Neal Palafox, Jonathan Weisgall—Jonathan, you are still around; I can't believe this—Mr. Don Miller and Mr. Robert Alvarez.

Dr. Palafox is presently professor and chair of the Department of Family Medicine and Community Health at the John A. Burns School of Medicine at the University of Hawaii. He completed his residency in family medicine at UCLA Medical School, obtained a master's in public health at Johns Hopkins in Maryland and he went to the Marshall Islands in 1983 as a National Health Service Corps physician, where he became co-medical director of the U.S.-funded program to care for the radiation-affected people of the Marshall Islands in 1985. He completed his 9-year tenure in the Marshall Islands as their medical director for preventive health services and public health.

Dr. Palafox has been working on Pacific health care disparities and developing cancer health care systems in the Marshall Islands and other U.S. Pacific countries, including the Territories of Guam, American Samoa, CNMI, FSM and the Republic of Palau. And between 1997 and 2009, Dr. Palafox was the principal investigator for a congressionally-mandated program to provide medical care for Marshall Islanders who were exposed to fallout from the Bravo hydrogen detonation in the Marshall Islands. Dr. Palafox has been integrally involved in the health issues of the Compact negotiations.

Another witness today is my good friend, Jonathan Weisgall, who has served as legal counsel for the people of Bikini since 1975. He is the author of "Operation Crossroads: The Atomic Tests at Bikini Atoll" and executive producer of Radio Bikini, which was nominated for a 1988 Academy Award for best documentary.

He is an adjunct professor of law at Georgetown University. He is a graduate of Columbia University and Stanford Law School. This gentleman has expended tremendous effort to help the people of the Marshall Islands.

Mr. Don Miller is a solo practitioner attorney from Colorado, specializing in Federal Indian law. Before starting his own firm in 2001, he was a staff attorney with the Native American Rights Fund in Boulder and Washington, DC, for 27 years.

He has represented tribal clients before the United States Supreme Court, Federal appellate courts and district courts. He has quite a bit of legal experience representing the various Indian tribes before State as well as Federal courts. He graduated from the University of Colorado with a bachelor's degree and a law degree.

Mr. Robert Alvarez is a senior scholar at the Institute for Policy Studies in Washington, DC, specializing in energy, environment and national security issues. And for 6 years, until 1999, Mr. Alvarez served as Deputy Assistant Secretary for National Security and Environmental Policy and senior policy advisor to the U.S. Secretary of Energy.

He also served on the majority staff of the U.S. Senate Committee on Governmental Affairs under the leadership of Senator John Glenn from the State of Ohio. Mr. Alvarez's work has appeared in Science, Ambio, Science and Global Security, Technology Review, the Bulletin of Atomic Scientists, the Washington Post, the Nation and several other publications.

Gentlemen, thank you for taking the time to be with us this afternoon. We would like to have you give your testimony.

Dr. Palafox.

STATEMENT OF NEAL A. PALAFOX, M.D., M.P.H., PROFESSOR AND CHAIR, DEPARTMENT OF FAMILY MEDICINE AND COMMUNITY HEALTH, JOHN A. BURNS SCHOOL OF MEDICINE, UNIVERSITY OF HAWAII

Dr. PALAFOX. Honorable——

Mr. FALEOMAVAEGA. Just call me Eni.

Dr. PALAFOX. Honorable Eni, I have been requested by this committee to provide a personal assessment of the medical achievements of the Marshallese people affected by U.S. nuclear testing. As you mentioned, I draw my testimony from my experience with the many nuclear programs in the Marshall Islands.

My testimony will discuss three related medical themes. The first is the health impact of the U.S. nuclear testing program in the Republic of the Marshall Islands. The second is the U.S. medical care response to the health impacts of nuclear testing. And third, what I think should be the recommended medical response and health care responsibility of the U.S. Government under the current situation.

The first part. Illnesses caused by the U.S. nuclear testing program were the result of three things: One is high-dose radiation exposure; the second thing is long-term exposure to low levels of ionizing radiation; and, thirdly, it is destruction of ancestral lands, culture disruption, and dislocation of Marshallese communities.

The health effects of high-dose exposure. Marshall Islanders, as you noted, Honorable Eni, is they experienced severe nausea, intractable vomiting, severe burns, hair loss, hypothyroidism because of the hot, sudden, high-dose radiation of 1954. Shortly after that, thyroid cancers began to appear.

The health effects from long-term, low-dose radiation. Long-term, low-dose radiation exposure can result in 24 types of cancer, including leukemia, breast, lung, intestine, stomach, bone, liver and brain cancers, to mention a few. An individual who is exposed to low doses may develop radiation-related cancer 40 years or more after the exposure.

Cancers will occur in the Marshallese throughout all of the atolls of the Marshall Islands because of the long-term effects of high- and low-dose radiation. These doses come from environmental particles that may be eaten, breathed, and digested in the food and environment. Ionizing radiation is also showing other illnesses that are other than cancer. They include hereditary defects, heart disease, strokes, digestive, respiratory and blood disorders.

What are the health effects associated with the destruction of ancestral lands and social disruption? Destruction of land and critical natural resources through radioactive contamination or forced evacuation leads to forced changes in dietary patterns and lifestyle which can prematurely cause heart disease, diabetes, and obesity.

Posttraumatic stress disorder results from trauma of forced change, cultural disruption, and illness. Posttraumatic stress disorder has never been addressed in the Marshall Islands.

The U.S. medical response. Because of nuclear testing, U.S. medical teams have three functions: One is to provide health care; secondly, is to perform medical monitoring regarding health trends; and, thirdly, research to gain information about the human response to ionizing radiation.

Provision of health care monitoring or research services by U.S. Medical teams was dependent on the U.S. Government priority at the time. Medical health care for illnesses generated by high-dose and low-dose radiation and the illnesses from destruction of lands and cultural living should have been provided by the U.S. medical teams. There is very little that was done or that is being done to adequately address, A, the long-term effects of radiation; or B, health effects from the destruction of Marshallese culture and lands.

It is my opinion that the major emphasis during and in the post-nuclear testing era was not the provision of medical care. Medical care was provided in an acute, as-needed function, without much forethought to developing a systematic health system to meet the ongoing health needs of the affected populations.

There are two medical programs that were put forth to meet medical needs. One program worked with Rongelap and Utrok communities affected by the Bravo detonation. Neither the Atomic Energy Commission and then the Department of Energy have the expertise or background to develop or implement the necessary health care systems needed to address the health impact of the nuclear testing program.

The current 177 health program for the four atolls was designed to be a comprehensive health care program and had an appropriate design. The 177 health care program for the four atolls has been crippled because of funding restraints.

This severely underfunded program sends a message from the U.S. Government that a comprehensive health care system response to the legacy of nuclear exposure in the Republic of the Marshall Islands is not a priority. The emphasis of the U.S. medical response to this day, in spite of the evidence of harm to the Marshall Islanders, is piecemeal, poorly contrived, poorly funded, and does not address the known health care needs of the affected population. It is not apparent that the U.S. agencies which provide health care to the Marshallese people have the health of the Marshallese people as a primary and central concern.

The recommended response. After 60 years of U.S. oversight, knowing there are latent cancers caused by U.S. Nuclear testing, the fact that a Marshallese person living in the Marshall Islands does not have access to routine cancer screening or there is not systematic mammography screening for breast cancer or that cancer treatment is not readily available is a travesty.

The appropriate approach to health care should advocate to protect and care for potential victims of nuclear testing at a U.S. standard of health care. Withholding health care for known consequences of nuclear radiation testing is a true social injustice, and, I agree with you, is racism. The Marshallese are developing and dying from treatable illnesses caused by the U.S.-Marshall Islands thermonuclear weapons testing programs.

I recommend the following actions. One, that the standards for health care screening and treatment for the people affected by ionizing radiation from the Nevada test site in Hanover be applied to the people of RMI.

Two, that the U.S. policymakers review the operational definitions regarding the extent and consequence of the nuclear testing program and support an expanded definition coinciding with current scientific evidence.

Three, that a preventive, precautionary, patient-centered approach to potential health issues be utilized instead of a reactionary approach.

Four, that a comprehensive cancer health care program, including prevention, screening, diagnosis and treatment, be systematically provided in the Marshall Islands at U.S. standards.

Thank you very much.

[The prepared statement of Dr. Palafox follows:]

Testimony of:
Neal A. Palafox, MD, MPH

House Foreign Affairs Committee
Subcommittee on Asia, Pacific, and the Global Environment

Thursday May 20, 2010: 2 PM

Oversight on the Compact of Free Association with the Republic of the Marshall Islands (RMI): Medical Treatment of the Marshallese People, US Nuclear Testing, Nuclear Claims Tribunal, Forced Resettlement, Use of Kwajelein Atoll for Missile Programs, and Land Use Development

Introduction:

Honorable Berman, Honorable Faleomavaega, and Congressional Members of the Committee: I have been requested by this committee to provide a personal assessment of the medical treatment of the Marshallese people affected by US nuclear testing. I would like to thank the Chairman for taking the time to hear and understand the complex relationship between the US and the Republic of the Marshall Islands as it relates to health care over the past five decades. This testimony is drawn from my experience as one of the physician founders of the Four Atoll Health Program in the Marshall Islands , as the principal investigator of the Department of Energy Program caring for Marshallese between 1999 and 2009, as the principal investigator of US Center for Disease Control or US National Cancer Institute funded cancer programs in the Marshall Islands and the US Pacific, and serving as a physician with the US Public Health

Service in the Marshall Iislands for 9 years. Currently I am Professor and Chair of the Department of Family Medicine and Community Health at the John A. Burns School of Medicine, University of Hawaii. My statement is not the opinions of the institutions with whom I work.

My testimony will discuss three related medical themes: (I) The health consequences of the US Nuclear Weapons Testing Program (USNWTP) in the Republic of the Marshall Islands, (II) the historical US medical response to the health consequences of nuclear testing , and (III) what the appropriate medical response and health care responsibility of the US government should be under the current situation.

I. Health Consequences of the US Nuclear Weapons Testing Program:

The Marshall Islands was the thermonuclear weapons testing site for the United States from 1946 to1958. During this period, 67 thermonuclear devices were detonated which had an explosive power equivalent to 7,200 Hiroshima atomic bombs.. The vast majority of the nuclear testing was above ground or atmospheric.

The health consequences (health related problems) of the US Nuclear testing in the Pacific were a result of: A) acute exposure of Marshallese people to high dose radiation B). chronic or long term exposure to low levels of ionizing radiation of Marshallese people C) . destruction of ancestral lands , cultural / social disruption, and dislocation of Marshallese communities

A. Health Effects from Acute Exposure

Acute radiation illness results from sudden exposure to high doses of radiation. The Rongelap community suffered acute radiation illness in 1954 when they were dusted by the nuclear debris from the Bravo hydrogen bomb test. The people suffered severe nausea, vomiting, burns, hair loss, fetal death, hypothyroidism (thyroid not functioning), and bone marrow shutdown.

Thyroid cancer followed several years after to exposure to high doses of I-131 According to a 2004 National Cancer Institute (NCI) report , thyroid cancers would likely increase by 200 percent above baseline because of the nuclear testing.

B. Health Effects from chronic, long term exposure:

Chronic low dose radiation exposure can have significant accumulative biological effects. After the testing period chronic low dose exposure resulted from environmental background radiation relating to isotopes with long half-lives. Internal radiation doses resulted from inhalation of plutonium or by ingestion of Ce-131 concentrated in plants, animals, and fruit.

The cumulative effect of ionizing radiation in the environment and food chain is known to be responsible for at least 24 types of cancer including leukemia, multiple myeloma, lung, intestine, stomach, kidney, liver, bone, thyroid and brain cancers (National Academy of Sciences Biologic Effects of Ionizing Radiation (BEIR) VII report). These cancers may be latent (i.e., an individual exposed to chronic low doses as a child may develop a radiation related cancer 40 years or more after the initial exposure). All of these types of cancers are currently prevalent in the Marshallese population.

The 2004 NCI report, prepared for the Senate Committee on Energy and Natural Resources, estimated 530 excess cancers from the nuclear weapons testing in the Marshall Islands. Half of the excess cancers have yet to manifest in the Marshall Islands population because of the latency period following the deleterious effects of ionizing radiation.

The NCI report notes that most excess cancers will occur in Marshallese exposed in the northern atolls however ionizing radiation exposure from the testing extended throughout all atolls in the Marshall Islands. Marshall islands populations previously considered not exposed are at increased risk of cancer from nuclear testing.

Ionizing radiation at high doses is now associated with illnesses other than cancer. BEIR VII also noted that intergenerational (hereditary) genetic effects may be possible in humans. BEIR VII further noted that a dose response relationship with mortality from non-neoplastic (non-cancer) disease has been demonstrated with statistically significant associations with heart disease, stroke, digestive, respiratory, and hematopoietic disorders.

C. Health Effects associated with destruction of ancestral lands and social dispruption

In addition to the direct radiation effects, cultural and social disruptions from the Marshall Islands nuclear testing are associated with adverse health outcomes and illness. Alienation from the land and critical natural resources through radioactive contamination or forced evacuation destroyed the physical and cultural means of sustaining and reproducing a self-sufficient way of life. A forced change in dietary patterns and lifestyle prematurely induces heart disease, diabetes, and obesity,

Community integrity, traditional health practices, and sociopolitical relationships were adversely affected. Furthermore, community history and knowledge was destroyed as there was no lineage land upon which their culture was built.

II. Medical Monitoring and Surveillance, Medical Care, and Medical Inquiry (A Historical Perspective):

What was the US medical response to the health consequences of the US Nuclear Weapons Testing Program in the RMI?.

US Medical teams including physicians, nurses, and health care technicians were involved with the Marshallese people because of the nuclear testing There were several distinct functions that medical personnel may have performed. (The distinctions of function are important to understand the role of the medical team and what transpired with medical intervention during this era).

The purpose of US medical personnel in the RMI nuclear testing can be categorized as, to (1) provide health care, (2) to perform medical surveillance and monitoring regarding health trends, and (3) to gain medical and scientific information about the human response to ionizing radiation. Provision of health care services by US Medical teams was dependent on the US government emphasis at the time and the priority given to the respective medical functions.

There is a great deal of evidence that persists to the present day, and it is my opinion that the major emphasis in during and in the post nuclear testing era was NOT on medical care provision. Instead, the emphasis of the medical team was on surveillance, monitoring, and scientific inquiry. Medical care was provided in an acute, as needed function, without much forethought to developing a systematic health system to meet the ongoing health needs of the affected populations. While the expectation of the Marshallese people was appropriately a high level of health care intervention, the actual medical care received was limited. Indeed the Atomic Energy Commission (AEC) and the Department of Energy (DOE) overseeing these medical programs did not have and do not have the expertise or background to develop or implement the necessary health care systems overseas.

The current 177 Health Care Program for the Four Atolls was originally designed to be a comprehensive health care program, and not a monitoring or surveillance program. The 177 Health Care Program for the Four Atolls has been crippled because of funding restraints. This severely underfunded program sends a message from the US Government that a comprehensive health system response to the legacy of nuclear exposure in the Republic of the Marshall Islands is not a priority.

The emphasis of the US medical response to this day, in spite of evidence of harm to the Marshall Islanders, is piecemeal, poorly contrived, poorly funded, and does not address the known health care needs of the affected population. It is not apparent that the US agencies which provide health care to the Marshallese peoples have the health of the Marshallese people as a primary and central concern.

III. Current Medical Response; What Should it Be?:

The fact that Marshallese people were directly touched by US nuclear fallout is a tragic accident. The fact that today, knowing that there are latent cancers caused by US nuclear testing, after 60 years of US oversight, a Marshallese person living in the Marshall Islands does not have access to routine cancer screening, or there is not systematic mammography screening for breast cancer, or that cancer treatment is not readily available - is not an accident. The issues surrounding the US Pacific nuclear weapons testing program are about a disconnect of science and policy, and about disparity in health care access and treatment.

Unnecessary and unfair suffering has continued in the RMI for the past 60 years because the U.S. government has not taken a proactive stance on healthcare issues resulting from the nuclear testing program. US Congress 1980 - PL 96-205 regarding the Bravo test states, "a program for medical care and treatment…for any injury, illness, or condition which may result directly or indirectly of such nuclear weapons testing program" will be created and maintained. The present US policy regarding the number of people who were affected is arrogant rather than taking a conservative stance to advocate to protect and care for potential victims of nuclear testing. Limiting the health care services and medical response is not supported by the current scientific or medical evidence and is not in the Marshallse health interest. To the contrary, this action of withholding healthcare for known consequences of nuclear testing is a true social injustice. While a political debate ensues regarding responsibility and costs, Marshallese are developing and dying from treatable illnesses associated with the US Marshall Islands Thermo Nuclear Weapons Testing Program.

I propose the following four actions:

1. That the standards for health care, screening and treatment for those peoples affected by ionizing radiation from the Nevada test site and Hanover be applied to the people affected by the RMI nuclear weapons testing program. .

2. That US policy makers review the congressional operational definitions regarding the extent of the health consequences caused by the Pacific Nuclear Weapons testing program and support an expanded definition coinciding with current scientific evidence. This definition must include all populations who were adversely affected by the nuclear testing

3. That the spirit and intent of addressing environmental causes of cancer (eg. ionizing radiation from the Nuclear Testing) in the Marshall Islands should be in concert with the Presidents 2009 Cancer Panel report, ie a preventive precautionary approach to potential health issues be utilized instead of a reactionary approach.

4.. That further research to understand the health consequences of ionizing radiation, including the effects/ extent of cultural disruption, the health consequences of contamination of land/food sources, intergenerational genetic transmission of illness, and the extent of non-neoplastic illness associated with ionizing radiation (high blood pressure, strokes, cardiovascular illness, and intergenerational genetic transmission of disease) should be supported.

5. To adequately address the health consequences of the US Nuclear Weapons Testing Program, cancer health care (including prevention, screening, diagnosis, and treatment) must be systematically be provided in the Marshall Islands at US standards.

Thank you

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Mr. FALEOMAVAEGA. Thank you, Dr. Palafox.

Mr. Weisgall.

STATEMENT OF MR. JONATHAN M. WEISGALL, LEGAL COUNSEL FOR THE PEOPLE OF THE BIKINI ATOLL

Mr. WEISGALL. Mr. Chairman, thank you very much. I am legal counsel for the people of Bikini, but today I have been asked to testify on behalf of Bikini, Enewetak, Rongelap, and Utrok, the atolls most directly affected by the U.S. nuclear testing program. They are here today, Mr. Chairman, to tell you one story, and that is to review a 64-year shell game that the United States has played with their constitutional rights.

I am going to go over some of the issues that you covered with the first panel, but maybe from some different angles. So I am going to jump around a little bit in my statement.

Let's begin back in 1947 with the U.N. When the United States pledged to the United Nations in that agreement to protect the inhabitants against the loss of their lands and resources, that did not happen. The people of Bikini and Enewetak left their homelands and relied on the government's promise to return them safely. That has yet to happen. Bikini is still radioactive. No one lives there. The Enewetak people cannot return to their northern islands because of the high radiation levels there.

Let me give you an interesting statistic about that Bravo shot. The people of Rongelap, 125 miles away from Bikini, received radiation doses similar to people 2 miles from ground zero in Hiroshima and Nagasaki. That was the strength of the Bravo shot.

That Compact of Free Association—those solemn words by the United States, "We accept the responsibility for compensation owing to the citizens of the Marshall Islands for loss or damage to property and person resulting from the nuclear testing program." I have got that memorized.

On the other hand, the United States acknowledged its obligation but forced the Marshallese to seek the compensation in this newly established Nuclear Claims Tribunal. The atolls argued at the time that the funding was inadequate to protect their rights, and the U.S. courts ruled that they have to exhaust their remedies under the tribunal first before they come back. We will get back to that question.

Nineteen years go by with litigation before the tribunal. As you said, awards of $2.2 billion and payments of $3.9 million. If Mr. Ackerman were here, I would tell him the exact finances of that $150 million trust fund which had to pay out $18 million per year for 15 years. You do the math. It had to earn 12 percent per year. And, by the way, the first year of the trust fund was the 1987 crash, so you know what happened to that trust fund.

The Marshallese patiently pursued every possible remedy afforded by our legal system. They trusted the system to make them whole. The U.S. paid them nothing. And when they came back to the U.S. courts to seek to enforce the awards, the U.S. said, "Sorry, the doors are closed."

Let me give you one sentence as to what happened. The United States legislated itself out of its obligation to provide just compensation to these islanders, forced their claims into an alternative forum, and then failed to provide adequate funds for that forum.

My written statement covers the 30 years of litigation before the U.S. courts and the tribunal, but let me stress two key points here, because it is going to lead to my conclusion on this reference case.

Number one, in the 1980s, the U.S. Government wed language in its legal briefs that would have led any reasonable judge to conclude that there would be adequate and sustained funding. I want to read you some highlights from their briefs back in the eighties when this system was set up and they said go to the tribunal.

They called the 177 Agreement, that trust fund—I am quoting—“a permanent alternative remedy, with substantial and regenerating funding, for compensating all claims, in perpetuity.”

Let me quote from some other lines. I am reading from the U.S. Government’s briefs: “Permanent funding mechanism.” “Comprehensive long-term compensation plan.” “Provides continuous funding.” “Structured and financed to operate ‘in perpetuity.’ ” And, in response to us, “There is no basis to presume that the Agreement will fail to provide a just and adequate settlement.”

The second point I want to make, the courts. There is a level of sympathy there, and the courts, even in the eighties, said if the tribunal doesn’t function correctly—the U.S. Government said if the tribunal doesn’t function correctly, “Congress would need to consider possible additional funding.” And in their briefs, they refer to that trust fund as a base amount.

And when you read the written opinion of the U.S. Court of Appeals, the Federal Circuit Court of Appeals, two separate times it refers to that trust fund as an “initial sum,” an “initial amount.” And then 20 years later, last year, the Federal Circuit Court of Appeals recognized that the funding is simply outside of judicial remedy.

There is a role for Congress, that is my point, especially after the Supreme Court denied cert.

What should this committee do? Develop legislation under your congressional reference authority to refer these cases to the Court of Federal Claims; direct that court to make findings sufficient to inform Congress whether this is legal or equitable—that is an issue we have talked about today—legal or moral; and to determine the amount of damages. That court does that every day. They determine damages on land claims. And let them come back with a recommendation.

The American people—and you have heard it from your colleagues up there—the American people have a legal and moral obligation to compensate the people of the Marshall Islands. And I would say to those who have said that the book is closed on this issue because of the passage of the compact and because of the establishment of that trust fund, I would say that one chapter is missing in that book, and that book cannot be closed until the lands of the islanders are restored and they receive full compensation for their claims against the United States, and the United States cannot and should not play a shell game with the constitutional rights of the Marshall Islanders.

Thank you.

[The prepared statement of Mr. Weisgall follows:]

STATEMENT OF JONATHAN M. WEISGALL ON BEHALF OF THE PEOPLES OF BIKINI, ENEWETAK, RONGELAP AND UTROK BEFORE THE HOUSE FOREIGN AFFAIRS SUBCOMMITTEE ON ASIA, THE PACIFIC AND THE GLOBAL ENVIRONMENT

May 20, 2010

Mr. Chairman, thank you for giving the peoples of the four atolls of Bikini, Enewetak, Rongelap, and Utrok the opportunity to testify before you today. I have served as legal counsel to the people of Bikini Atoll since 1975, but I am submitting this joint statement on behalf of the four atolls that were most directly affected by the U.S. nuclear testing program in the Marshall Islands.

I. Introduction

The people of the four atolls are here today for one reason: They all trusted the U.S. Government, and they have all suffered as a result. The United States has played a 64-year-old shell game with the constitutional rights of these islanders, who, for their part, have patiently pursued every possible remedy afforded by our legal system – to no avail:

- The U.S. pledged to the United Nations to care for the Marshallese and "protect [them] against the loss of their land and resources." The U.S. did not fulfill that promise.
- In the 1940's, the U.S. promised the people of Bikini and Enewetak that they would be accorded the constitutional rights of U.S. citizens. That did not happen.
- The peoples of Bikini and Enewetak did all that the U.S. Government demanded of them and more: They left their home islands for decades and relied on the government's promise to return them to their property. That has yet to happen.
- When fallout showered the peoples of Rongelap and Utrok, they trusted the U.S. Government to care for them.
- When these events gave rise to compensation claims, the four atolls pursued their claims in U.S. courts, and the U.S. government strongly resisted their claims.
- Then, when the U.S. negotiated the Compact of Free Association with the Marshall Islands, it solemnly "accept[ed] the responsibility for compensation owing to citizens of the Marshall Islands . . . for loss or damage to property and person . . . resulting from the nuclear testing program."
- However, after acknowledging its obligation to provide compensation, the U.S. forced the Marshallese to seek that compensation not in U.S. courts but rather through a newly-established Nuclear Claims Tribunal in the Marshall Islands.
- The four atolls challenged this scheme, arguing that giving the Tribunal $45.75 million to cover their claims was woefully inadequate to protect their rights and cutting off federal court review of the adequacy of just compensation was unconstitutional, but the U.S. courts ruled that it was premature to decide

these questions until the Marshallese had exhausted their remedies under the Tribunal.

- So the Marshallese spent the next 19 years litigating their claims before the Tribunal, which did its job and issued more than $2.2 billion in awards, but, because of limited funding from the United States, was only able to pay out $3.9 million, which represents less than 2/10 of 1% of its awards.
- The Marshallese trusted the system to make them whole, but the United States paid them virtually nothing on these claims.
- And when the Marshallese came back to the U.S. courts to seek to enforce these awards, the U.S. Government said, "Sorry, the doors of our courts are closed."

In a word, the United States legislated itself out of its obligation to provide just compensation to these islanders, forced their claims into an alternative forum and then failed to provide adequate funds for that forum.

In the meantime, thanks in no small part to the testing program in the Marshall Islands, the United States fought the Soviet Union to a nuclear testing stalemate and eventually won the Cold War, but it has never discharged its fiduciary obligations to the nuclear victims in the Marshall Islands.

II. Background on Nuclear Testing Program in the Marshall Islands

Mr. Chairman, you, more than any other member of Congress, are familiar with this legacy. It began at Bikini in March 1946 when the U.S. Navy moved the 167 islanders off their atoll to facilitate Operation Crossroads, the world's fourth and fifth atomic bomb explosions. The following year, the U.S. Government moved the people of Enewetak off their atoll to start nuclear testing there.

The March 1, 1954 Bravo nuclear test at Bikini was the largest nuclear bomb ever exploded by the United States. Its explosive yield -- equal to nearly 1,000 Hiroshima-type atomic bombs – was more than 200 times greater than the yield of the largest test ever conducted at the Nevada Test Site, and its fallout covered an area of 50,000 square miles, with serious-to-lethal radioactivity falling over an area almost equal in size to the entire state of Massachusetts.[1] Radioactive fallout drifted eastward and irradiated the 236 inhabitants of Rongelap and Utrok Atolls, as well as the crew of a Japanese fishing vessel.

The Atomic Energy Commission (AEC) admitted that about 7,000 square miles downwind of the shot "was so contaminated that survival might have depended upon prompt evacuation of the area..." [2] Put another way, if Bravo had been detonated in

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[1] Findings of the Marshall Islands Nationwide Radiological Study Summary Report (December 1994) at p. 3; Jonathan M. Weisgall, Operation Crossroads: The Atomic Tests at Bikini Atoll (Naval Institute Press 1994) at p. 306.

[2] New York Times, March 25, 1954, pp. 1, 18.

Washington, DC, and the fallout pattern had headed in a northeast direction, it would have killed everyone from Washington to New York, while near-lethal levels of fallout would stretch from New England to the Canadian border.[3]

The U.S. nuclear weapons testing program had a dramatic impact on the Marshall Islands. Between 1946 and 1958, the United States conducted 67 atomic and hydrogen atmospheric bomb tests at Bikini and Enewetak atolls, with a total yield of 108 megatons. That is the equivalent to 7,200 Hiroshima bombs, which works out to an average of more than 1.6 Hiroshima bombs per day for that 12-year period. During these years, the Marshall Islands were a United Nations Trust Territory administered by the United States, which had pledged to the United Nations to "protect the inhabitants against the loss of their land and resources."[4]

The U.S. Government moved the people of Bikini five times in four decades, even carelessly back to their own radioactive atoll until the islanders themselves had to sue the United States to be moved off. In March 1946, the government moved the Bikinians to Rongerik Atoll, 125 miles east of Bikini, promising to return them in a few months and to care for them in the interval. Instead, the people nearly starved on Rongerik over the next two years. The United States then moved them to Kwajalein Atoll and then to Kili. Kili remains home to most Bikinians more than 64 years after the testing began, and life there remains difficult. Kili is a single island, not an atoll with a lagoon. Bikini, with its 23 islands and 243-square mile lagoon, is at least 750 times bigger, and its land area is more than nine times bigger. Kili has no sheltered fishing grounds, so the skills the people had developed to fish for lagoon and ocean life were rendered useless on Kili. This drastic change from an atoll existence, with its abundant fish and islands as far as the eye could see, to an isolated island with no lagoon and inaccessible marine resources, continues to take a severe psychological toll on the people.

Following President Lyndon Johnson's August 1968 announcement that Bikini was safe and that the resettlement of Bikini would "not offer a significant threat to [the Bikinians'] health and safety," he ordered the atoll rehabilitated and resettled.[5] Some Bikinians lived there until 1978, when medical tests by U.S. doctors revealed that the people had ingested what may have been the largest amounts of radioactive material of any known population, and they determined that the people had to be moved immediately.[6] What went wrong? An AEC blue-ribbon panel, in estimating the radiation dose the people would receive, relied on a scientist's erroneous data that threw off one part of their calculations by a factor of nearly 100. "We just plain goofed," the scientist told the press.[7]

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[3] Jonathan M. Weisgall, Operation Crossroads: The Atomic Tests at Bikini Atoll (Naval Institute Press 1994), pp. 304-05.

[4] Trusteeship Agreement for the Former Japanese Mandated Islands, 61 Stat. 3301, 80th Cong., 1st Sess. (1947), Art. 6, Sec. 2.

[5] Shields Warren, "Report of the Ad Hoc Committee To Evaluate The Radiological Hazards Of Resettlement Of The Bikini Atoll," DOE/CIC Document No. 41847; New York Times, August 13, 1968, p. 1; August 2, 1968 memorandum for the President from Bromley Smith entitled "Return Of The Bikini People," National Security file, Lyndon B. Johnson Library.

[6] Washington Post, April 3, 1978, p. 1, and May 22, 1978, p. 1.

History sadly repeated itself in late August 1978, as U.S. ships once again entered Bikini lagoon and the 139 people living on the island packed up their possessions and left. The nearly 4,000 Bikinians living today remain scattered throughout the Marshall Islands and the United States, with the largest number still living on Kili.

The Bikinians' story is not unique. The peoples of the other three atolls have similar stories to tell, of being moved off their islands and seeing their homelands contaminated. Indeed, the dispossession of the people of the Marshall Islands and the health consequences of nuclear weapons testing that began in the shadow of World War II and continued through the United States' victory in the Cold War have yet to end – more than six decades later.

The U.S. Government's record 64 years after testing began is sobering:

- The Bikinians remain exiled from their homeland, which is still in need of radioactive cleanup.
- Approximately half the Enewetak population cannot return to their home islands in the northern part of the atoll, where radiation still renders the islands too radioactive.
- At least four islands at Bikini and five at Enewetak were completely or partially vaporized during the testing program.
- Although they were over 100 miles from Bikini, the people of Rongelap received a radiation dose from Bravo equal to that received by Japanese people less than two miles from ground zero at Hiroshima and Nagasaki. They suffered from radiation poisoning; all but two of the nineteen children who were under ten at the time of Bravo developed abnormal thyroid nodules, and there has been one leukemia death.[8] The people were moved off the islands for three years after the Bravo shot, and they moved off again in 1985 amid concerns about radiation dangers. Resettlement activities are currently underway, but questions about radiation safety continue to linger.
- Here is what the head of the Brookhaven National Laboratory/Atomic Energy Commission medical surveillance team for the islanders wrote in his 1957 annual report on the exposed Marshallese: "The habitation of these people on the island will afford the opportunity for most valuable ecological data on human beings . . .

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[7] Los Angeles Times, July 23, 1978, p. 3.

[8] Edwin J. Martin and Richard H. Rowland, Castle Series (Defense Nuclear Agency Report No. 6035F 1954), pp. 3, 235; Robert A. Conard et al., A Twenty-Year Review of Medical Findings in a Marshallese Population Accidentally Exposed to Radioactive Fallout (Brookhaven National Laboratory 1974), pp. 59-76, 81-86).

The various radioisotopes present on the island can be traced from the soil, through the food chain, and into the human being."[9]

- This "guinea pig" mentality is also reflected in the following statement by AEC official Merrill Eisenbud at a 1956 AEC meeting about returning the people of Utrok to their atoll: "Now, data of this type has never been available. While it is true that these people do not live, I would say, the way Westerners do, civilized people, it is nevertheless also true that these people are more like us than the mice. So that [returning the people to Utrok] is something which will [be] done this winter."[10]

III. U.S. Claims Court Litigation and the Compact of Free Association

Based on the damages inflicted upon them by the U.S. nuclear testing program, the peoples of the four atolls brought lawsuits in the 1980's against the U.S. Government in the U.S. Claims Court seeking compensation under the Fifth Amendment for the taking of their land. The Claims Court denied the U.S. Government's motion to dismiss the Bikinians' case, held that their claims were timely, and moved the case through discovery.[11] Cases filed on behalf of the other atolls were similarly advanced by the Claims Court after rejection of the U.S. Government's initial motions to dismiss.[12]

While these cases were working their way through the courts, the U.S. and Marshall Islands governments entered into a Compact of Free Association, in Section 177(a) of which the United States "accept[ed] the responsibility for compensation owing to citizens of the Marshall Islands . . . for loss or damage to property and person . . . resulting from the nuclear testing program." Section 177(b) called for a separate agreement to ensure "the just and adequate settlement of all such claims." Pursuant to this so-called "Section 177 Agreement," the two governments created a Nuclear Claims Tribunal "to render final determination upon all claims past, present and future" of the Marshallese "related to the nuclear testing program."[13] The Section 177 Agreement also established a $150 million trust fund, with income of $45.75 million earmarked to the Tribunal for the payment of compensation awards.[14] In conjunction with the establishment of this "alternative tribunal to provide just compensation,"[15] the Section 177 Agreement called for the termination of the federal court lawsuits brought by the Marshall Islanders.

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[9] Robert Conard, "March 1957 Medical Survey of Rongelap and Utrik People Three Years After Exposure to Radioactive Fallout" (Brookhaven National Laboratory, June 1958) ("Concluding Remarks") at p. 22. (*See* http://www.hss.energy.gov/healthsafety/ihs/marshall/collection/data/ihp1a/4569_.pdf.)

[10] Minutes of the AEC Advisory Committee on Biology and Medicine (January 13 and 14, 1956), p. 232. (*See* http://www.hss.energy.gov/healthsafety/ihs/marshall/collection/data/ihp1c/0495_a.pdf.)
See also "Radiation Exposure from Pacific Nuclear Tests," Oversight Hearing before the House Natural Resources Subcommittee on Oversight and Investigations, February 24, 1994 103rd Cong., 2nd Sess.) at p. 61.

[11] *Juda v. United States*, 6 Cl. Ct. 441, 450-451, 458 (1984).

[12] *See e.g., Nitol et al v. United States*, 7 Cl. Ct. 405 (1985).

[13] 48 U.S.C. § 1921b(e)(2).

The Court of Federal Claims subsequently dismissed the pending Marshall Islands lawsuits on the grounds that the claimants had to first exhaust the Nuclear Claims Tribunal's proceedings.[16]

The court explained, however, that the Section 177 Agreement's termination of claims "applies to termination of proceedings, and not to extinguishment of the basic claims involved," noting that Congress had acknowledged its "obligation to compensate" and had simply "establishe[d] an alternative tribunal to provide such compensation." The Bikinians argued that the Nuclear Claims Tribunal was inadequately funded by the United States and therefore would not protect their rights, but the court ruled that "[t]his alternative procedure for compensation cannot be challenged judicially until it has run its course."[17]

In a related appeal by the people of Enewetak, Rongelap, Utrok, and other northern atolls of the Marshall Islands, the Federal Circuit agreed that judicial intervention was not appropriate "at this time" based on the "mere speculation that the alternative remedy may prove to be inadequate," and concluded that it need not address the adequacy of the Tribunal process "in advance of [its] exhaustion."[18] The court added that the U.S. Government had committed "an initial sum" to resolve claims, "with additional financial obligations over fifteen years for the settlement of all claims," and that Congress had demonstrated its "concern that its alternative provision for compensation be adequate."[19]

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[14] The $150 million "Nuclear Claims Fund" established under the Section 177 Agreement was, in the words of the Agreement's Preamble, designed to "maintain, in perpetuity, a means to address past, present and future consequences of the Nuclear Testing Program. . . ." The fund was required to distribute $18 million annually for the first 15 years to make distributions required by the Agreement, including about $3 million annually to the Nuclear Claims Tribunal. This represents an average investment return for 15 years of 12.5% annually (12.5% x $150 = 18). That rate of return, of course, could not be sustained over time, and the Fund had to eat into its corpus starting in the first year in order to meet the $18 million distributions. The Fund, not surprisingly, no longer exists. However, the expectation at the time the Agreement was signed was that the Nuclear Claims Tribunal would make awards in excess of $45.75, because Article II, Section 7 (c) of the Agreement provides that, "[c]ommencing on the fifteenth anniversary of the effective date of this Agreement, not less than 75 percent of Annual Proceeds shall be available for disbursement in whole or partial payment of monetary awards made by the Claims Tribunal."

[15] *People of Enewetak v. United States*, 864 F.2d 134, 136 (1988), *cert. denied*, 491 U.S. 909 (1989),

[16] *Juda v. United States*, 13 Cl.Ct. 667 (1987); *Nitol et al. v. United States*, 13 Cl. Ct. 690 (1987).

[17] *Id.* at 686, 688, 689.

[18] *People of Enewetak*, 864 F.2d at 136, 137 (1988), *cert. denied*, 491 U.S. 909 (1989).

[19] *Id.* at 135-36.

IV. The Nuclear Claims Tribunal and Adequacy of Funding

Once again, the Marshallese did what they were told by the United States. Over the next two decades, each of the four atolls brought claims and litigated before the Nuclear Claims Tribunal, each received awards, and, just as each had predicted to the U.S. courts, the inadequately funded Tribunal could not pay the awards.

For example, the Tribunal determined that the Bikinians were entitled to $563,315,500 in compensation, after offsetting for payments previously made by the United States. However, due to inadequate funding, the Tribunal was able to pay the Bikinians only $2,279,000, or less than one-half of 1% of their award. As the Tribunal explained, "the Nuclear Claims Fund is insufficient to make more than a token payment."

The other atolls faced similar dilemmas. Enewetak was awarded $385,894,500, but only received $1,647,482, and no payments have been made on the awards to Utrok ($307,356,398) or Rongelap ($1,031,468,700).

What did the U.S. Government tell the courts about the Nuclear Claims Tribunal's funding scheme over the years? It is interesting to contrast the government's position over the years. The United States in 1988 characterized the Compact scheme to the court as an open-ended commitment as it sought to assure the Federal Circuit that the Tribunal would provide just compensation for all possible claims. It represented to the Court that "the Compact and Section 177 Agreement provide a permanent alternative remedy, with substantial and regenerating funding, for compensating all claims, as necessary, in perpetuity." Its brief is replete with reassurances that the Section 177 compensation scheme would be permanent, substantial, continuous, and comprehensive.[20] "There is no basis to presume that the [Section 177] Agreement . . . will fail to provide a just and adequate remedy,"[21] it argued, assuring the court that the Agreement provides "continuous funding" and a "comprehensive, long-term compensation plan." It added that there is a "continuing moral and humanitarian obligation on the part of the United States to compensate any victims—past, present or future—of the nuclear testing program." Lastly, it argued that the Marshall Islanders' "constitutional challenge proceeds from the presumption that an international Compact, to which two governments have committed themselves and their resources, will not provide the just remedy it promises. That presumption is wholly incorrect."[22] And in case there was any doubt, it pointed to the actual text of the preamble to the Section 177 Agreement, which promises to "provide, in perpetuity, a means to address past, present and future consequences of the Nuclear Testing Program."

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[20] Brief of the United States at 14, *People of Bikini, Enewetak, Rongelap, Utrik and other Marshall Island Atolls v. United States*, Nos. 88-1206-1207-1208 (Fed. Cir., June 24, 1988). *See also id.* at 33: "a complex, permanent mechanism for compensating claimants"; "a comprehensive, permanent means of resolving... nuclear claims"; 34: an "Agreement to provide *continuous* funding to resolve, not avoid, [the] consequences [of the Nuclear Testing Program]" (emphasis in original); "create and maintain, *in perpetuity*, a means to address..."; "resultant claims" from the nuclear testing program (emphasis in original); 37: "reasonable" and "well funded"; 38: "permanent funding mechanism"; "comprehensive, long-term compensation plan"; 45: "structured to operate permanently" to "provide continuous funding"; "structured and financed to operate 'in perpetuity'"; "no basis to presume that the Agreement... will fail to provide a just and adequate settlement."

[21] *Id.* at 45.

If the funding actually did prove to be inadequate, the government told the court that Congress could step in: "It is, of course, conceivable that the Fund could become depleted because of radical long-term investment difficulties, or substantial unforeseen damages," and it went on to quote Article IX, the changed circumstances provision, as one example of how additional funding would be available, assuring the court that "[i]n ratifying the [Section 177] Agreement, Congress also recognized that should changed circumstances arise which would prevent the program from functioning as planned, Congress would need to consider possible additional funding."[23]

The U.S. Government also stressed that the $150 million trust fund established under the Section 177 Agreement was a "base investment" and that additional funding could become available through other means:

> In the Section 177 Agreement... the United States has responded to the complex consequences of the nuclear testing program by negotiating a diverse compensation plan providing... a mechanism for direct adjudication of *all* claims. This plan has been structured to operate permanently, and, at a base investment of $150 million, to generate sufficient proceeds to address all identified needs. In ratifying the Agreement, Congress also recognized that should changed circumstances arise which would prevent the program from functioning as planned, Congress would need to consider possible additional funding.[24]

This is why in 1988 the Federal Circuit Court, assured by the U.S. Government that it would honor its constitutional obligation to pay just compensation if the entire $150 million trust fund under Section 177 proved insufficient, called that $150 million an "initial sum" and an "initial amount."[25]

In 2000, the Marshall Islands Government presented Congress with a petition under the "Changed Circumstances" article of the Section 177 Agreement requesting additional funds to cover unpaid Tribunal property claims. Congress asked the State Department to make a recommendation on this petition. That department thought about the issue for five years before recommending that Congress not act. And when the Marshall Islands

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[22] *Id.* at 35.

[23] *Id.* at 34-35.

[24] *Id.* at 44-45.

[25] *People of Enewetak v. United States,* 864 F.2d 134, 135-36 (Fed. Cir. 1988) (emphasis added).

Government sought to engage the State Department on this issue, State refused, using as an excuse that "this issue is on a separate track . . . before Congress via the [Marshall Islands Government's] request submitted under the changed circumstances provision." That outdid Joseph Heller's "Catch-22."

Fast forward now to 2008, with the Nuclear Claims Tribunal "perpetual" fund out of money and able to pay only 2/10 of 1% of its awards.[26] Did the U.S. Government argue to the court that there would be adequate funding to pay all claims? No. In a rather terse statement, it argued instead that there is no constitutional issue because the Section 177 Agreement offers "monetary compensation" greater than "zero."[27]

V. Are the Nuclear Claims Tribunal Awards Excessive?

No. The Tribunal Awards were made through an independent judicial process and are extremely conservative and reasonable. The Section 177 Agreement, to which the U.S. Government was a party, established the Nuclear Claims Tribunal as the body responsible for determining how much compensation should be paid and to whom. After the Tribunal issued its decisions in the Bikini and Enewetak cases, some officials in Congress and the administration suggested that the "home field" advantage of the Tribunal resulted in skewed and inflated awards and somehow invalidated the Tribunal's judicial process. In response, the Marshall Islands Government retained former Attorney General Dick Thornburgh to perform an independent assessment of the Tribunal's procedures and decisions.

On May 20, 2005, Attorney General Thornburgh issued his report to the House Resources Committee. "Simply stated," he wrote, "the report finds that the [Nuclear Claims Tribunal] fulfilled the basic functions for which it was created in a reasonable, fair and orderly manner, and with adequate independence, based on procedures, closely resembling legal systems in the United States, that are entitled to respect." The Thornburgh report also concluded that the property damage claims litigated before the Tribunal were "characterized by the kind of legal briefing, expert reports, and motion practice that would be found in many U.S. court proceedings" and that the hearing procedures and rules of evidence resembled those used in similar U.S. proceedings.[28]

The Tribunal's awards were neither skewed nor inflated. For example, the people of

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[26] As of May 15, 2010, the Nuclear Claims Fund had a balance of $71,303.92. The Nuclear Claims Tribunal has a chairman, but there are no other judges, no Defender of the Fund, nor a Public Advocate. May 15-16, 2010 personal correspondence with William Graham, former Public Advocate.

[27] Brief of the United States at 25, *People of Bikini v. United States*, No. 2007-5175 (Fed. Cir.) (Apr. 4, 2008).

[28] Dick Thornburgh et al., "The Nuclear Claims Tribunal of the Republic of the Marshall Islands: An Independent Examination and Assessment of its Decision-Making Process" (Kirkpatrick & Lockhart, LLP 2003) ("Thornburgh Report"), p. 2.

Bikini presented cleanup options that ranged as high as $1 billion, but the option selected by the Tribunal cost about $250 million and is the same cleanup method recommended by the U.S. Department of Energy's Lawrence Livermore National Laboratory.

These cleanup costs are significant, but they must be considered in the context of the cost of the tests themselves:

- The Department of Defense costs for all nuclear tests in the Marshall Islands exceeded $6 billion.[29] Civilian costs are harder to calculate, but in transferring its materials, facilities and properties to the new Atomic Energy Commission in 1946, the Manhattan Project spent $3.8 billion to manufacture nine new atomic bombs and continue research.[30] The AEC spent over $4.3 billion from July 1, 1946 through June 30, 1947,[31] and from 1948-1958, the AEC spent nearly $130 billion on production research, development, and testing of nuclear weapons.[32]
- The United States never questioned the cost or value of the nuclear tests at Bikini and Enewetak because they assured U.S. nuclear superiority over the Soviet Union and led to immediate savings of billions of dollars in the Defense Department budget in the late 1940's and 1950's. As the AEC told Congress in 1953: "Each of the tests involved a major expenditure of money, manpower, scientific effort and time. Nevertheless, in accelerating the rate of weapons development, they saved far more than their cost."[33]
- The costs to clean up the radioactive, chemical and other hazardous waste at just 21 U.S. nuclear weapons production sites in 13 states dwarfs the numbers for the Marshall Islands. The Department of Energy estimates these costs at $205-$260 billion.[34] Congress appropriated an average of $5.75 billion annually for the program in the late 1990's, and it is anticipated that this funding level will continue at this rate indefinitely.[35]

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[29] Stephen I. Schwartz, ed., Atomic Audit: The Costs and Consequences of U.S. Nuclear Weapons Since 1940 (Brookings Institution Press 1998), pp. 101-03. The dollar figures in this book, expressed in 1996 dollars, have been updated through 2010 using a Consumer Price Index inflation calculator. See http://www.bls.gov/data/inflation_calculator.htm.

[30] Id. at 61-62.

[31] Id. at 63.

[32] Id. at 65-75.

[33] U.S. Atomic Energy Commission, Thirteenth Semiannual Report of the Atomic Energy Commission (1953), p. 18.

[34] See http://www.em.doe.gov/Pages/projects.aspx. See also Closure Planning Guidance (U.S. Department of Energy, Office of Environmental Management) (June 1, 2004) at p. 14; http://www.em.doe.gov/vgn/images/portal/cit_1819/26/34/94385Vol1_Final_Printed_Version_Word4.pdf.

[35] Accelerating Cleanup: Paths to Closure (U.S. Department of Energy, Office of Environmental Management) (June 1998) at pp. 2, 5-8. See also Environmental Management: Program Budget Totals (FY 1998 - FY 2000) and Environmental Management's FY 2000 Congressional Budget Request.

- The U.S. Government has now spent more than $49 billion at the Hanford, Washington nuclear weapons site without removing one shovelful of contaminated soil.[36] That is what the Department of Energy has spent on studying radiation problems at an area exposed to a miniscule percentage of the radiation that was unleashed in the Marshall Islands.
- Under the Radiation Exposure Compensation Act of 1990,[37] the U.S. Government has already approved compensation claims of approximately $1.5 billion to claimants who were on-site at Nevada nuclear tests, those downwind from the testing, uranium mill workers, uranium ore transporters, and others working in radioactive mines.[38] The magnitude of the nuclear tests in Nevada was approximately 1% of the Marshall Islands tests.[39] In addition, under the Energy Employee's Occupational Illness Compensation Program Act,[40] the U.S. Government has paid an additional $5.75 billion to eligible Department of Energy nuclear weapons employees, contractors and subcontractors.[41]

VI. Congressional Reference Case

Where are we today and what can or should Congress do? Last month, on April 5, 2010 the U.S. Supreme Court denied review of the appeal filed by the people of Bikini and Enewetak seeking to obtain compensation for the Nuclear Claims Tribunal awards. That decision settles 30 years of litigation, not only for Bikini and Enewetak, but for Rongelap and Utrik as well. Nevertheless, it is interesting to review some of these decisions over the years to see how the courts emphasized the themes of equitable relief, congressional intervention, if necessary, and the view that the Section 177 Agreement is a perpetual fund that began with an "initial" appropriation:

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[36] See http://www.em.doe.gov/pdfs/EMProjectsLCC.pdf.

[37] 42 U.S.C. § 2210 (2006) (1990), P.L. 101-426. This statute provides monetary compensation for people who contracted cancer and a number of other specified diseases as a direct result of their exposure to atmospheric nuclear testing undertaken by the United States during the Cold War, or their exposure to high levels of radon while working in uranium mines.

[38] See http://www.usdoj.gov/civil/omp/omi/Tre_SysClaimsToDateSum.pdf. Moreover, last month bills were introduced in the Senate (S. 3224) and House (H.R. 5119) that would expand qualifications for compensation, raise levels of compensation, and expand the downwind exposure area.

[39] Thornburgh Report, supra n. 25 at p. 3.

[40] 42 U.S.C. §§ 7384 et seq. (2006). This program pays workers who were approved for compensation under Section 5 of the Radiation Exposure Compensation Act, or their eligible survivors, an additional $50,000 and future medical benefits related to the condition for which they were approved for compensation under the Radiation Exposure Compensation Act.

[41] See http://www.dol.gov/owcp/energy/regs/compliance/weeklystats.htm.

- Following adoption of the Compact, the Court of Federal Claims dismissed the Bikinians' lawsuit on the ground that they first had to exhaust the Tribunal's proceedings. However, the court explained that the Section 177 Agreement's "termination" of claims "applies to termination of proceedings, and not to extinguishment of the basic claims involved," noting that Congress had acknowledged its "obligation to compensate" and had simply "establishe[d] an alternative tribunal to provide such compensation." The court explained, "As long as the obligations are recognized, Congress may direct fulfillment without the interposition of either a court or an administrative tribunal."[42]

- In affirming that decision, the Federal Circuit Court of Appeals did so on the understanding that the Compact Section 177 Agreement provided "in perpetuity, a means to address past, present and future consequences" of the U.S. nuclear testing program.[43] That premise has turned out to be false.

- The same court viewed the $150 million fund provided under the Section 177 Agreement as an "initial sum" and an "initial amount," with "additional financial obligations over fifteen years for the settlement of all claims," and that Congress had demonstrated its "concern that its alternative provision for compensation be adequate."[44]

- The Nuclear Claims Tribunal was established as an "alternative tribunal to provide just compensation,"[45] not 2/10 of 1% of just compensation, as has been paid to date.

- In dismissing the Bikini and Enewetak lawsuits in 2007, Judge Miller of the U.S. Court of Federal Claims concluded by noting that the matter of just compensation was properly in the hands of the U.S. Congress through consideration of the "Changed Circumstances" petition that had been submitted to Congress pursuant to Article IX of the Section 177 Agreement or pursuant to "such action as it deems appropriate."[46]

- In affirming Judge Miller's ruling in 2009, the Federal Circuit Court of Appeals "observe[d] that its sense of justice, of course, makes it difficult to turn away from a case of constitutional dimension. . . ."[47] It went on to conclude that U.S. courts had no power to hear the Bikini and Enewetak claims because Congress, in the Section 177 Agreement, withdrew the jurisdiction of U.S. courts to hear such claims: "This court cannot hear let alone remedy, a wrong that is not within its power to adjudicate. The sweeping language of the Section 177 Agreement withdraws jurisdiction of the U.S. courts."[48]

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[42] *Juda v. United States*, 13 Cl.Ct. 667, 688, 689 (1987).

[43] *People of Enewetak v. United States*, 864 F.2d 134 136 (Fed. Cir. 1988), *cert. denied*, 491 U.S. 909 (1989).

[44] *Id.* at 135-36 (emphasis added).

[45] *Id.* at 136.

[46] *People of Bikini v. United States*, 77 Fed. Cl. 744, 768 (Ct.Cl. 2007).

[47] *People of Bikini v. United States*, No. 2007-5175 (Fed. Cir.), 554 F.3d 996, 1001 (Fed. Cir. 2009).

- Ultimately, the Federal Circuit Court of Appeals acknowledged that the remedy for the claims essentially lies with Congress: "The settlement agreement entrusted the funding remedy to a procedure outside the reach of judicial remedy."[49]

With the Supreme Court's recent decision refusing to hear the Bikini and Enewetak appeals, relief before the U.S. courts through the normal litigation process is now closed, not only for Bikini and Enewetak, but also for Rongelap and Utrik, as pursuing their claims in the U.S. courts would be fruitless.

This Committee cannot initiate appropriations, but it can take the lead in getting the United States to honor its constitutional, statutory and moral obligations to the people it damaged and the others who, with no real options, gave up their lands to help the United States win the Cold War. The peoples of all four atolls urge this Committee to take that lead by referring their cases to the Court of Federal Claims under Congress' congressional reference authority set forth in statute[50] and by court regulations.[51]

Our understanding of the procedure, which other witnesses will discuss today, is that, if directed by Congress, the Court of Federal Claims will produce an advisory report to Congress that is prepared in much the same manner that a court case is tried and decided, in which the court makes findings and conclusions sufficient to inform Congress whether the demand is a legal or equitable claim or a gratuity and also determines the amount (if any) that is legally or equitably due from the United States to the claimants.[52]

The people of the four atolls stand ready to assist you in any way possible in moving such legislation forward.

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[48] *Id.*

[49] *Id.* at 1000.

[50] *See* 28 U.S.C. §§ 1492, 2509.

[51] Rules of the United States Court of Federal Claims, Appendix D, Procedure in Congressional Reference Cases, p. 6.

[52] 28 U.S.C. § 2509(c). See also *Burkhardt v. United States*, 113 Ct. Cl. 658 (1949) ("We are therefore of the opinion that the term 'equitable claim,' as used in 28 U.S.C. § 2509, is not used in a strict technical sense meaning a claim involving consideration of principles of right and justice as administered by courts of equity, but the broader moral sense based upon general equitable considerations.")

VII. U.S. Department of Agriculture Food Program

The last issue we wish to bring to your attention is the U.S. Department of Agriculture food program for the peoples of the four atolls. This program was initiated many years ago due to the displacement of the islanders, the taking and destruction of some of their islands, and ongoing concerns about radiation safety of the islands to which they returned. The program was codified in Section 103(h)(2)(B) of the Compact of Free Association Act of 1985 (P.L. No. 99-239), which provides that the "President of the United States shall . . . continue . . . the [U.S. Department of Agriculture] food programs of the Bikini and Enewetak people." Section 103(h)(3) goes on to direct that the food program "be provided to such extent or in such amounts as are necessary" and furthermore that: "It is the sense of Congress that . . . consideration will be given to such additional funding for these programs as may be necessary."

The Section 103 U.S. Department of Agriculture food program was later expanded to include Rongelap and Utrok, and in 2003 Congress revisited this issue in Section 103(f)(2)(B) of the Compact of Free Association Amendments Act of 2003 (P.L. No. 108-188), which directs the President of the United States to "ensure the assistance provided under these programs reflects the changes in the population since the inception of such programs."

The simple fact is that the populations of the four atolls have increased significantly over the years without any corresponding increase in the U.S. Department of Agriculture food program allotment. This issue does not require any new legislation. It simply requires congressional oversight to ensure that the U.S. Department of Agriculture carries out its job and increases its allotment of the Department's food program to the peoples of the four atolls to adequately reflect the increases in their population. The combination of the radiation problems at the four atolls and in their soils and the recent financial downturn in the value of trust funds established for their well-being has turned the basic task of just feeding the people into a huge concern. The four atolls have raised this issue informally with both Region IX of the U.S. Department of Agriculture and with the U.S. Department of the Interior, but your oversight in making sure this happens would be greatly appreciated.

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Mr. Chairman, the American people have a legal and moral obligation to compensate the people of the Marshall Islands who gave so much of their health and property in the defense of the United States. To those who say the book is closed on this part of American history because of the Compact of Free Association, we say no, because one chapter is missing. That book cannot be closed until the islanders' lands are restored and they have received full compensation for their claims against the United States. This country cannot and should not play a shell game with the constitutional rights of the Marshall Islanders.

We appreciate the opportunity to appear before you today, and I or the Marshallese leaders of the four atolls would be pleased to answer any questions you may have. Thank you.

Mr. FALEOMAVAEGA. As always, I am very happy to see you, Mr. Weisgall, not just as someone who has institutional memory, but also because we have been together on this issue with the Marshall Islands for so long. I deeply appreciate your statement.

Mr. WEISGALL. I do know you from the Eni Hunkin days when Mr. Burton chaired the committee a long time ago.

Mr. FALEOMAVAEGA. Mr. Miller.

STATEMENT OF MR. DON MILLER, ESQ., INDEPENDENT ATTORNEY-AT-LAW

Mr. MILLER. Mr. Chairman, it is an honor to appear before you today. I have been asked to provide the committee my assessment of the congressional reference process and its suitability for furthering the nuclear claims case of the Marshallese people. I have prepared and submitted written testimony and my comments will generally summarize what I have prepared and submitted.

For the last 26½ years, I have represented the Alabama-Coushatta Tribe of Texas in Congressional Reference Number 3–83. I think that that case and the experience of that tribe in pursuing it may be instructive to the committee, so I would like to review it just very briefly.

In 1970, the Alabama-Coushatta Tribe filed a 9-million-acre land claim against the United States. After a trial, the court ruled that they couldn't pursue it; that the courthouse door was closed. The tribe could not bring it because of the statute of limitations. So the tribe sought a congressional reference. It took six Congresses to get it through.

In 1983, Congress referred the claim to the claims court. We litigated—I drafted and filed the complaint in that case—and we litigated that case for 17 years against the United States Department of Justice. It is the most contentious litigation process I have ever been involved in.

In the year 2000, the court finished the liability phase of the case and ruled that the United States would be liable for damages on 2.5 million acres of that 9-million-acre claim. At that point in time, the Justice Department and the Tribe and all the lawyers looked at each other and said, "Wow, we are tired; let's see if we can't settle this."

So for 2 years we worked toward settlement. We hired experts. And in 2002 we stipulated that, under that opinion, the United States should pay the Tribe $270.6 million. It was approved. That recommendation was returned to Congress in 2002, and Congress has yet to take action on it. We are still working on it.

The congressional reference process is a process that is available to you here to seek an advisory opinion from the Court of Federal Claims. It is used in complex cases where Congress doesn't feel like it has the fact-finding and legal expertise, so you can refer a private claims bill to the court of claims for—it is now the United States Court of Federal Claims—for an advisory opinion.

Once the case goes over there, it is a fully adversarial proceeding. And if the court finds in favor of the claimant, it will return a recommendation to Congress and then it will be up to Congress to take action.

I certainly am not an expert on the Marshall Islands, but from what I have heard and read over the last few weeks preparing for this testimony, it appears to me that the congressional reference process would be ideally suited to address the circumstances that you have before you now.

The United States has undertaken and breached a number of solemn fiduciary and contractual obligations. The United States has given assurances upon which the Marshallese relied in good faith, and they apparently have done so to their extreme detriment. The courts have considered these claims and have ruled with finality that the courthouse doors are now closed, and that is precisely the kind of circumstance that the congressional reference procedure is designed to address.

I would note that the Marshall Islanders have been through decades of litigation, and if you utilize this process, you are probably consigning them to decades more of litigation. But if that is the only route that is available to the Congress—and I am not sure it is—I think perhaps you could do the right thing and go ahead and pay it. But that may not be feasible, and if it is not, then certainly the congressional reference procedure is appropriate in these circumstances.

I might urge the committee, though, that if you do send them to the Court of Federal Claims, you might want to consider making provision—in light of the role that the United States has played in prolonging their litigation woes, if you will—you might want to consider providing a fund that could allow them to retain expert witnesses and assist them in that litigation process. I think that that is well within your purview to do. Congress has done that before for American Indian Tribes in the Indian Claims Commission Act, so the committee might want to consider doing that.

I will be happy to answer any questions. Thank you for the opportunity.

[The prepared statement of Mr. Miller follows:]

Don B. Miller
Don B. Miller, P.C.

Testimony
Before the Subcommittee on Asia, the Pacific
And the Global Environment

Committee on Foreign Affairs

United States House of Representatives

Oversight Hearing on the Compact of Free Association with the Republic of the Marshall Islands (RMI): Medical Treatment of the Marshallese People, U.S. Nuclear Tests, Nuclear Claims Tribunal, Forced Resettlement, Use of Kwajalein Atoll for Missile Programs and Land Use Development.

May 20, 2010

House Subcommittee on Asia, the Pacific and the Global Environment

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May 20, 2010

Chairman Faleomavaega and members of the Subcommittee, I am Don B. Miller, of Boulder, Colorado. It is an honor to appear before you today. I was asked to provide the Committee my assessment of the Congressional Reference process and its suitability for furthering the nuclear claims case of the Marshallese people impacted by nuclear testing.

I. INTRODUCTION

For the last 26 and one half years, I have represented the Alabama-Coushatta Tribe of Texas in Congressional Reference No. 3-83. My practice is limited to the field of Federal Indian Law, and, prior to opening my own law office in 2001, I was an attorney with the Native American Rights Fund for 27 years. For virtually my entire legal career, I have represented Indian tribes in large land-claim cases before the federal courts and Congress. Because the history of the Alabama-Coushatta claim may be instructive to the Committee in its evaluation of whether Congress should afford the Marshallese people an opportunity to seek redress for damages caused by nuclear testing, I will first briefly describe the proceedings in Congressional Reference No. 3-83.

In November, 1983, the House Judiciary Committee referred the Alabama-Coushatta land claim to the Court of Federal Claims. The United States had failed to provide notice to the Tribe of its eligibility to file claims against the United States under the Indian Claims Commission Act of 1946. That Act established a commission to hear legal and equitable claims for money damages against the United States accruing before 1946 and imposed a five-year statute of limitations for Indian tribes to file their claims. In 1970, long after the 1951 filing deadline, the Alabama-Coushatta Tribe learned of the Indian Claims Commission and filed its land claim by intervening in the timely filed case of another tribe claiming the same area of East Texas. After trial, the Commission dismissed the Alabama-Coushatta claim for lack of jurisdiction because it had not been filed before the 1951 deadline. But the Commission later denied the other tribe's recovery to the area claimed by Alabama-Coushatta because the Alabama-Coushatta Tribe had proven that it possessed aboriginal title to that area before its claim had been dismissed.

Denied an opportunity to present its meritorious claims before the Indian Claims Commission on jurisdictional/statute-of-limitations grounds, the Alabama-Coushatta sought a Congressional Reference. In 1983, in the 98th Congress, the sixth in which the private relief bill had been introduced, the House Judiciary Committee passed House Resolution 69 and referred H.R. 1232 to the United States Claims Court (now the Court of Federal Claims). H.R. 1232 directed the Court, among other things, to determine whether the Tribe's claim should be paid notwithstanding the bar of the statute of limitations.

Congressional Reference No. 3-83 was contentiously litigated from early 1984 to 2000, when a Review Panel of the Court of Federal Claims concluded the liability phase of the case with a 96-page opinion finding that the Tribe had (once again) proven its aboriginal title and that it had not received the required notice of opportunity to file its claim before the 1951 limitations period expired. The review panel recommended "that the United States Government pay full monetary compensation to the Tribe for 2,850,028 acres of the Tribe's aboriginal lands illegally occupied by non-Indian settlers after 1845." *Alabama-Coushatta Tribe of Texas v. United States*, 2000 WL 1013532 (Fed.Cl.).

After this final liability opinion issued, the damages phase of the case began. The Tribe and the United States Department of Justice, weary after almost 17 years of hard-fought litigation, entered into a negotiation process to attempt to agree on the amount of damages due under the Court's liability ruling. In February, 2002, 19 years after the Tribe filed its complaint in Congressional Reference No. 3-83, the United States and the Tribe stipulated that the amount of damages due under the liability decision is $270.6 million. In October, 2002, the Chief Judge of the Court of Federal Claims transmitted to Congress the Review Panel's recommendation that the United States pay the Tribe $270.6 million and that the amount did not constitute a gratuity. It is noteworthy, as an illustration of how vigorously the Government contested the Alabama-Coushatta claim, that even after losing twice in the Congressional Reference review process and exhausting all of its appeals, the Department of Justice still refused to accept the validity of the Court's liability ruling and preserved its right to object to the ruling before Congress.

To date, Congress has not acted on the Court's recommendation in Congressional Reference No. 3-83, although we are hopeful that implementing legislation will soon be introduced in the 111th Congress.

II. THE PURPOSE OF THE CONGRESSIONAL REFERENCE PROCESS

The House Judiciary Committee's Rules of Procedure for Private Claims Bills, noting that the right to petition for redress of grievances is guaranteed by the First Amendment to the Constitution, state that "[i]n connection with its jurisdiction over claims, the [S]ubcommittee [on Immigration, Citizenship, Refugees, Border Security, and International Law] considers private bills extending relief to individuals who have no other existing remedy." (A private bill provides relief to specified individuals, including corporate bodies, and is to be distinguished from legislation of general applicability.) The House rules further state that when the Subcommittee is asked to decide whether relief should be granted, its inquiry will be guided by principles of justice and equity and that the Subcommittee's task is to determine whether the "equities and circumstances of a case create a moral obligation on the part of the Government to extend relief." The United States Constitution, art. I, § 8, cl. 4, empowers Congress to pay the nation's debts, and the Supreme Court has held that Congress may pay moral or even honorary debts as well as legal debts.[1]

The requirement that parties seeking private relief have no other existing remedy is central to the private relief process, and the Subcommittee's Rule 9 expressly provides that "[t]he subcommittee shall not consider any claim over which another tribunal, court, or department has jurisdiction, until all remedies under such jurisdiction are exhausted." The note accompanying Rule 9 states that in the settlement of claims, Congress is always the place of last resort and requires that, if Congress has provided another means of obtaining redress, the claimant must provide proof that such other avenues have been exhausted before the Subcommittee may consider the claim.

In certain cases, Congress may wish to refer the private claim to the Court of Federal Claims for findings, conclusions and a recommendation. The reasons why Congress might want to refer a claim have been summarized by Jeffrey Glosser as follows:

> There are several rationales for wanting private claims evaluated by judicial methods in an adversary proceeding, in lieu of private legislation. First, the facts and the applicable law are so complex that the matter can be resolved best through a court proceeding. Second, the claim should be established by competent evidence which can be evaluated best by a court. Third, the cognizant congressional committees lack the time, facilities, and expertise necessary to hear the evidence and make determinations on the issues. Fourth, the claim requires a trial proceeding which may be protracted and which may need to be held in a location other than Washington, D.C. Fifth, the [Court of Federal Claims] is an impartial and independent tribunal whose processes are careful and evenhanded.[2]

To provide for such cases, Congress has granted jurisdiction and set forth the process to be followed. *See* 28 U.S.C. §§ 1492 (jurisdiction) and 2509 (process). Essentially, these statutes make it possible for either House of Congress to request an advisory opinion from the Court of Federal Claims. Commentators have noted that the congressional reference procedure makes the Court of Federal Claims an arm of Congress. After the proceedings in the Court of Federal Claims have concluded, no judicial review is available and the matter is returned to Congress with a recommendation. It is then up to Congress to grant or deny relief.

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[1] *Pope v. United States*, 323 U.S. 1 (1944).

[2] Jeffrey M. Glosser, *Congressional Reference Cases in the United States Court of Claims: A Historical and Current Perspective*, 25 American University Law Review 595, 605 (1976) (footnotes omitted).

Congress rarely utilizes the congressional reference procedure. Several research memos in our files state that in many years, Congress will not refer any cases to the Court of Federal Claims (or its predecessor courts), and that Congress' average number of references over the past forty-plus years has been in the range of three to four per year. Indeed, it appears that the 108th, 109th and 110th Congresses may not have referred any cases, with the most-recent reference occurring just over eight years ago in the second session of the 107th Congress, when the House Judiciary Committee approved H. Res. 103, referring H.R. 1258 to the U.S. Court of Federal Claims.[3]

III. THE PROCESS OF REFERRING A CLAIM TO THE COURT OF FEDERAL CLAIMS.

The process of referring of a claim to the Court of Federal Claims is usually initiated by the claimant's own Representative or Senator, who introduces a private relief bill that identifies the claimant, describes the nature of the claim and authorizes and directs payment of the claim, leaving the amount to be paid blank. After the bill has received a bill number, usually within one or a few days, the Representative then introduces a resolution which, if approved, directs referral of the private relief bill to the Chief Judge of the United States Court of Federal Claims. Thereafter, the resolution and bill be referred to the Judiciary Committee's Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law.[4]

The bill's sponsor then is responsible for requesting Subcommittee action and providing the Subcommittee with sufficient evidence showing that all other remedies have been exhausted and why the claim should be paid. Thereafter, the Department of Justice, and perhaps other agencies, will be asked to file a report on the matter. The Congressional Budget Office will provide a cost estimate, which can be expected to find no significant impact on the Federal budget because any payment would depend on further Congressional action and pay-as-you-go procedures would therefore not apply.[5] The Subcommittee may or may not conduct a hearing.

If the Judiciary Committee acts favorably, referral resolutions are sent with a committee report to the House floor and placed on the Private Calendar. The Congressional Research Service Guide to Legislative Process in the House states that the Private Calendar is called on the first and third Tuesdays of each month. If objection is made by two or more Members to the consideration of any measure called, it is recommitted to the committee that reported it. There are six official objectors, three on the majority side and three on the minority side, who make a careful study of each bill or resolution on the Private Calendar and who will object to a measure that does not conform to the requirements for that calendar, thereby preventing the passage without debate of nonmeritorious bills and resolutions.[6]

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[3] *See* H.R. Rep. No. 444, 107th Cong., 2nd Sess. (May 7, 2002).

[4] Rule XII 2(d) of the Rules of The House of Representatives prohibits referral of private claims bills to a committee other than Judiciary *or* Foreign Affairs except by unanimous consent. However, research has failed to reveal any instance over the last four decades where a private bill has been referred to any committee other than Judiciary.

[5] *See,e.g.,*H.R. Rep. No. 444 at 3.

IV. PROCEEDINGS IN THE UNITED STATES COURT OF FEDERAL CLAIMS.

Upon referral of a bill for private relief, the Court's clerk assigns a docket number and notifies all known interested parties that they have 90 days in which to file a complaint. Copies of the notices must be provided to the Department of Justice. To the extent feasible, the Rules of the Court of Federal Claims will apply. Thus, the proceedings usually will be fully adversarial, differing at the trial level very little from the proceedings before the Court in any non-reference case. However, as in "regular" court cases, adversarial proceedings may be avoided by negotiation and stipulation either in the liability phase of a case or, after the liability phase has concluded, in the damages phase. Glosser notes that the need for trial also may be obviated if the claim had been previously filed as a legal suit. In such cases, at least with regard to those issues that were the subject of agreement and stipulation in the earlier litigation, "the record of the prior legal claim could make trial in the congressional reference case unnecessary."[7]

After the complaint is filed, the Chief Judge designates by order a judge of the Court to serve as the hearing officer and three other judges to serve as the review panel, designating one as the panel's presiding officer. Section 2509 requires the hearing officer to

> determine the facts, including facts relating to delay or laches, facts bearing upon the question whether the bar of any statute of limitation should be removed, or facts claimed to excuse the claimant for not having resorted to any established legal remedy. He shall append to his findings of fact conclusions sufficient to inform Congress whether the demand is a legal or equitable claim or a gratuity, and the amount, if any, legally or equitably due from the United States to the claimant.

To ensure that Congress is as fully informed as possible, Appendix D to the Rules of the Court of Federal Claims, which sets forth the procedure to be followed by the court in congressional reference cases, additionally requires the hearing officer to "find the facts specially."

After the hearing officer issues a decision, the parties have 30 days to file either a notice accepting the decision or a notice of intent to except to the report, i.e., appeal.

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[6] http://www.rules.house.gov/archives/lph-calendars.htm (website visited on May 13, 2010).

[7] Jeffrey M. Glosser, *Congressional Reference Cases in the United States Court of Claims: A Historical and Current Perspective*, 25 American University Law Review 595, 609 (1976) (footnotes omitted).

Regardless of whether the parties accept or except to the report, it, together with the record in the case, will be transmitted to the review panel. If no party files a notice of intent to except, the review panel must nonetheless review the hearing officer's report and, if it is considering a material modification, it must notify the parties and set up a briefing schedule and oral argument, if requested. If one or more notices of intent to except are filed, the review panel must issue a briefing schedule and conduct oral argument, if requested.

The review panel may not set aside the hearing officer's findings of fact unless it finds them to be clearly erroneous, giving due regard for the hearing officer's judgments about the witnesses' credibility. The review panel may not set aside the hearing officer's conclusions of law unless, on de novo review, justice shall so require. If the review panel determines that a case should be returned to the hearing officer for some reason, such as the need for additional findings of fact, it may so order. After the case has been fully briefed and argued, the review panel must, by majority vote, adopt or modify the hearing officer's findings and conclusions and file its report with the clerk for service on the parties.

Thereafter, the parties have 14 days to file a motion for rehearing to alter or amend the review panel's report, together with a brief in support. A response is not required, but may be filed within 14 days. Oral argument on a motion for rehearing is not permitted. If rehearing is denied, the adversarial proceedings are over. If rehearing is granted, the review panel takes whatever further action it deems appropriate for the particular case. At the conclusion of proceedings before the review panel, the Chief Judge may not entertain further appeals. Final decisions of a review panel may not be appealed to any court, i.e., judicial review is unavailable.

When all proceedings are concluded, the Chief Judge is required to transmit the report of the review panel to the house of Congress that referred the matter in the first instance.

V. BACK IN CONGRESS: ACTING ON THE CHIEF JUDGE'S RECOMMENDATION.

House initiated reference cases are returned to the Clerk of the House of Representatives. It is unclear whether the case is then automatically sent back to the Judiciary Committee, or whether the Committee simply is notified that the Chief Judge's recommendation has been received. Presumably, the sponsoring Member (or the Member currently occupying the sponsor's seat) is also notified. Almost always, the Chief Judge's recommendation will be returned to a later Congress than that which referred the matter to the court in the first instance. Thus, when a referred case is returned with a favorable recommendation, a new private relief bill must be introduced.

If the Chief Judge's recommendation is negative, i.e., the report of the review panel concludes that payment of the claim is not justified, the sponsoring Member (or the Member currently occupying the sponsor's seat) will likely be reluctant to introduce legislation to authorize payment of the claim. If the Chief Judge's recommendation is favorable, the sponsoring Member or his replacement will generally introduce a new private relief bill to implement the recommendation.

Because the composition of the House subcommittee considering the bill is usually different from that of the subcommittee at the time of the bill's reference, the subcommittee can generally be expected to hold a hearing on bills to implement favorable recommendations.

Congress has almost uniformly honored the court's recommendations in congressional reference cases. Apparently, there is only one instance where Congress has refused to follow the favorable recommendation of the court.[8]

After the legislation implementing the court's favorable recommendation is passed by both houses of Congress, it must be signed into law by the President. Glosser notes that (at least in 1976, when he wrote his article) there have been only two instances where the President has vetoed congressional reference legislation.[9]

V. SUITABILITY OF THE CONGRESSIONAL REFERENCE PROCESS TO FURTHER THE CLAIMS OF THE MARSHALLESE PEOPLE AFFECTED BY NUCLEAR TESTING.

As noted above, the congressional reference process is structured to evaluate equitable and moral claims for which no legal remedy exists. Prior to the mid-1980s, moral claims and equitable claims were often considered to be roughly equivalent, embodying the principle of "what the Government ought to do as a matter of good conscience."[10] More than a half century ago, the Claims Court eloquently elaborated on the principle that might properly inform Congress' inquiry here as well as, one would hope, the Court of Federal Claims' inquiry, should the claims of the Marshallese be referred:

> In its broadest and most general signification, equity denotes the spirit and habit of fairness, justness, and right dealing which would regulate the intercourse of men – the rule of doing to all others as we desire them to do to us; or as it is expressed by Justinian – "to live honestly, to harm nobody, to render every man his due." It is therefore the synonym of natural right or justice. . . . It is grounded in the precepts of the conscience, not in any sanction of positive law.[11]

In more recent congressional reference cases, however, the Court of Federal

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[8] *See* Glosser, *supra* 25 A.U.L.R. at 627 and notes 217 & 218.
[9] *Id.* at 628.
[10] *B. Amusement Co. v. United States*, 148 Ct.Cl. 337, 342 (1960).
[11] *Gay Street Corp. v. United States*, 130 Ct.Cl. 341, 350 n.1 (1955).

Claims has sometimes adopted a more pinched view of what constitutes an equitable claim. In a 2004 case, for example, the court stated:

> Equitable claims . . . arise from "an injury occasioned by Government fault" when there is "no enforceable legal remedy--due, for example, to the bar of sovereign immunity or the running of the statute of limitations." Under the prevailing view, in order to recover on an equitable claim, the plaintiff must show two things: that "the government committed a negligent or wrongful act" and that "this act caused damage to the claimant." . . . . What is wrongful or negligent action under this standard? As noted above, wrongful conduct carries with it an element of fault. It thus entails more than a mere error or questionable exercise of government discretion; rather, there must be some violation of a standard of conduct established by statute or regulation or a recognized rule of common law, and that violation must damage the claimant. This occurs not only when a plaintiff has a claim under a statute that is otherwise barred by sovereign immunity, but also, for example, when the government acquires benefits through the overreaching of its agents, when government officials act outside the scope of their authority, or when government actions have resulted in unjust enrichment. To support an equitable claim based on a negligent action, fault of a different sort must be shown: the plaintiff must demonstrate that "the government possessed a duty ..., that the government breached that duty, and that the breach caused the plaintiff's damage." Outside the wrongful or negligence spheres are governmental actions that violate only principles of ethics or morality--such actions, even where they offend the conscience, give rise only to a gratuity.[12]

In 2009, a review panel in a congressional reference case stated its understanding of what constitutes an equitable claim:

> For a claimant to assert a viable equitable claim in a congressional reference case, he or she must demonstrate that the government committed a negligent or wrongful act and that this act caused damages to the claimant. A claimant has a cognizable equitable claim in a congressional reference case when a plaintiff has a claim under a statute that is otherwise barred by sovereign immunity, . . . when the government acquires benefits through the overreaching of its agents, when government officials act outside the scope of their authority, or when government actions have resulted in unjust enrichment.[13]

Other cases, however, have continued to recognize that an equitable claim, "in the context of a congressional reference, does not mean a claim in equity in the technical sense, but rather a broad moral right to recover based upon general equitable considerations."[14]

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[12] *J.L. Simmons Co., Inc. v. U.S.*, 60 Fed.Cl. 388, 394-395 (Fed.Cl. 2004) (citations and footnotes omitted).

[13] *Land Grantors in Henderson, Union, Webster Counties, KY v. U.S.*, 86 Fed.Cl. 35, 57-58 (Fed.Cl. 2009) (citations omitted).

To encourage the court to fully take into account the substantial moral and humanitarian dimensions of the Marshallese claims, the House might consider informing the court that it intends to weigh such claims by the broader standard and it would appreciate the court's recommendation taking that into account.[15]

Under either standard, however, it would appear that the congressional reference process is ideally suited to address the claims of the Marshallese People affected by the United States Nuclear Testing Program. While I have at best a superficial understanding of the nature and scope of the claims at issue, the documentation I have reviewed over recent weeks shows that the United States undertook, and breached, a number of solemn fiduciary and contractual obligations to the Marshallese People. Several times, it appears that the United States gave assurances upon which the Marshallese relied in good faith to their extreme detriment. Thus, it seems likely that the requirement of a wrongful act by the United States causing damages to the claimant could be satisfied and an equitable claim demonstrated.

The courts have considered the Marshall Islanders' claims and have ruled with finality that their claims are barred by the lack of federal court jurisdiction and the political question doctrine. Moreover, the courts have explicitly recognized that payment of the claims asserted in the Nuclear Claims Tribunal is a matter solely to be resolved by Congress.

So, while the congressional reference procedure appears to be an appropriate process for Congress to employ to assist in its evaluation of the United States' responsibilities to the Marshall Islanders, it should be noted that, if our experience in the Alabama-Coushatta case is any guide, the Marshall Islanders will likely be facing many additional years, if not decades, of hard-fought, expensive litigation against the United

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[14] *INSLAW, Inc. v. U.S.*, 35 Fed. Cl. 295, 302 (Fed.Cl. 1996).

[15] Because "[t]he House that refers a bill for a report pursuant to 28 U.S.C. §§ 1492 and 2509 cannot in the resolution to refer, or in its report on the resolution alter the statutory standards," *Paul v. U.S.*, 20 Cl.Ct. 236, 267 (Cl.Ct. 1990), the most the Judiciary Committee could do would be to recommend or request that such a standard be employed. However, because decisions of the Court of Federal Claims in congressional reference cases are advisory and carry no binding precedential effect, *id.* at 266, a hearing officer or review panel considering referred Marshallese claims would seem to be free to adopt either the broad view or the more constrained view of what constitutes an equitable claim and thus might well take Congress' request into account. Moreover, even if the court were to employ the narrow definition of equitable claims and conclude that payment of the Marshall Islanders claims would be a gratuity, it could still recommend favorably on the claims. And finally, because the report of the Chief Judge in a congressional reference case is merely a recommendation, Congress would be free to act favorably on the claims regardless of the court's characterization of the payment as in satisfaction of an equitable claim or a gratuity.

States. It might further be noted that after the Marshall Islanders spent long years pursuing their claims in their first round of federal court litigation, the United States forced them out of federal court and into another Congressionally created forum, the Nuclear Claims Tribunal. They spent an additional two decades litigating in that forum to no avail because Congress did not adequately fund it. Now, after an additional decade of litigation in their second round of federal court litigation, Congress is considering once again directing them into a lengthy and expensive litigation process.

I understand that that may well be the best Congress can do, and that simply doing the right thing and concluding the matter by paying the Nuclear Claims Tribunal's awards is likely not politically feasible. But in light of the role the United States has played in delaying compensation and prolonging the litigation woes of the Marshall Islanders, might it not be appropriate for Congress to consider establishing a fund for use by the Marshall Islanders in obtaining expert assistance, other than the assistance of counsel, for the preparation and trial of their referred claims before the Court of Federal Claims? Congress established a similar fund for use by American Indian tribes and recognizable groups in pursuing their claims before the Indian Claims Commission.[16] That fund was a revolving loan fund, but in light of the apparent equities here, Congress might wish to consider establishing a fund from which grants would be made.

VI. CONCLUSION

Under the circumstances in which the Marshall Islander now find themselves, the congressional reference process appears to be the best, and perhaps only, avenue through which Congress can address the claims of the Marshallese People affected by the United States Nuclear Testing Program.

I commend the Chairman for his willingness to explore options for addressing these difficult and complex issues. Thank you for the opportunity to appear before you and I will be pleased to answer any questions you may have or provide additional information in the future should the Committee so require.

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[16] 25 U.S.C. § 70n-1; Pub.L. 88-168 §1, Nov. 1, 1963, 70 Stat. 301 (repealed).

Mr. FALEOMAVAEGA. Thank you.

Mr. Alvarez.

STATEMENT OF MR. ROBERT ALVAREZ, SENIOR SCHOLAR, INSTITUTE FOR POLICY STUDIES

Mr. ALVAREZ. Mr. Chairman, thank you very much for the opportunity to testify before you.

The radiological legacy of the U.S. nuclear weapons testing in the Marshall Islands remains to this day and will persist for many years to come. The amount of radioactivity released from the weapons tests in the Marshall Islands is staggering. The six largest tests conducted in 1954 released on the order of 50 times more radioactive iodine than the Chernobyl accident, for example.

The most severe impacts were visited upon the people of Rongelap in 1954, following a large thermonuclear shot which deposited life-threatening quantities of radioactive fallout on their homeland.

The Rongelap people were exposed to more than three times the estimated external dose than the most heavily exposed people living near the Chernobyl accident in 1986. It took more than 2 days before the people of Rongelap were evacuated after the explosion. Many, as you have heard, have suffered from tissue-destructive effects of radiation and, subsequently, from latent radiation-induced diseases.

In 1958, they were returned to their homeland, even though officials and scientists working for the U.S. Atomic Energy Commission determined that radiation doses would significantly exceed those allowed for citizens of the United States. That desire to study humans living in a radiation-contaminated environment appeared to be a major element of this decision.

By 1985, the people of Rongelap fled their atoll after determining that the levels of contamination were comparable to the Bikini Atoll, where people were resettled in 1969 and evacuated in the mid-1970s after radiation exposures were found to be excessive.

A few years before the evacuation of the Rongelap people in 1981, a policy was secretly established by the Energy Department during the closing phase of the negotiations of the Compact of Free Association to eliminate radiation protection standards so as not to interfere with the potential resumption of weapons testing in the Pacific.

These circumstances were subsequently uncovered in 1991 by the U.S. Senate Committee on Governmental Affairs, which I was involved in investigating. As a result of this investigation, the Environment Safety and Health program of the Marshall Islands was moved out of the DOE weapons program. Congress terminated what was called the “Safeguard Sea” program that was to be a readiness program to resume nuclear weapons testing in the Pacific. And in 1992, the U.S. Departments of Interior and Energy entered into an agreement with the Republic of the Marshall Islands and the local Rongelap Government that reestablished radiation protection standards as the major element for the resettlement of Rongelap. This agreement was reviewed by the National Academy of Sciences in 1994 and found to be viable.

One of the key aspects of this, according to the Academy:

> "A crucial provision is that resettlement will occur if no person returning to Rongelap and subsisting on native foods only will receive a calculated annual whole-body radiation dose equivalent to more than 100 millirem above background."

In 2006, a radiological expert for the people of the Rongelap Atoll reported that the 100 millirem limit would be exceeded based on a local-food-only diet and if potassium fertilizer was not repeatedly applied. Apparently this was not done for the southern islands, the atoll where local food is obtained. Despite this warning, the Departments of Energy and Interior did not take steps to ensure this would be done in accordance with the 1992 agreement.

Given the long and unfortunate legacy of nuclear testing, it appears that this critical element of safety was lost in the shuffle. Until the U.S. Government can assure that steps to mitigate doses below 100 millirem are demonstrated by applying potassium fertilizer, efforts to pressure the Rongelap people back to their home is unjustified and unfairly places the burden of protection on them. It appears that DOE and Interior have quietly crept away from this 1992 agreement without verifying that its terms and conditions to allow for safe habitability will be met.

I also would like to say that I wholeheartedly agree with Dr. Palafox. The United States Congress has enacted legislation for U.S. citizens, people who were exposed to weapons testing from the Nevada test site, people who worked in uranium mines, and people that worked at Energy Department facilities making nuclear weapons, which provide a far greater benefit of the doubt than is provided to the people of the Marshall Islands.

In particular, the Energy Employment Illness Compensation Program Act, which I was involved with while in the Energy Department, has a very interesting concept which I think needs to be applied to the Marshall Islands. It essentially provides for compensation for workers where it is not feasible to perform dose reconstruction and the burden of proof shifts to the government.

At the Hanford site in Washington State, the Los Alamos site in New Mexico, for example, and the Nevada test site, it has now been determined it is not feasible to reconstruct the exposures to these workers, even though they wore individual film badges, were routinely monitored for internal exposures and the like. And I think that this is a clear example of what we need to follow, and I wholeheartedly support that proposal.

Thank you very much. I appreciate the opportunity, and will be willing to answer any questions you may entertain.

[The prepared statement of Mr. Alvarez follows:]

STATEMENT OF
ROBERT ALVAREZ
SENIOR SCHOLAR
INSTITUTE FOR POLICY STUDIES
BEFORE
THE
SUBCOMMITEE ON ASIA, THE PACIFIC AND THE GLOBAL ENVIRONMENT
U.S. HOUSE OF REPRESENTATIVES

May 20, 2010

Summary

The radiological legacy of U.S. nuclear weapons testing in the Marshall Islands remains to this day and will persist for many years to come. The most severe impacts were visited upon the people of the Rongelap Atoll in 1954 following a very large thermonuclear explosion which deposited life-threatening quantities of radioactive fallout on their homeland. The Rongelap people were exposed to more than three times the estimated external dose to the most heavily exposed people living near the Chernobyl nuclear accident in 1986.

It took more than two days before the people of Rongelap were evacuated after the explosion. Many of the exposed Rongelap people suffered from tissue destructive effects of radiation and subsequently from latent radiation-induced diseases.

In 1957, they were returned to their homeland even though officials and scientists working for the U.S. Atomic Energy Commission determined that radiation doses would significantly exceed those allowed for citizens of the United States. The desire to study humans living in a radiation-contaminated environment appeared to be a major element of this decision.

By 1985, the people of Rongelap fled their atoll, after determining that the levels of contamination were comparable to the Bikini atoll where people were re-settled in 1969 and evacuated by the early 1970's after radiation exposures were found to be excessive. A few years before the evacuation of the Rongelap people in 1985, a policy was secretly established by the Energy department during the closing phase of the Compact of Free Association to eliminate radiation protection standards, so as to not interfere with the potential resumption of weapons testing.

These circumstances were subsequently uncovered in 1991 by the U.S. Senate Committee on Governmental Affairs. As a result, in 1992 the U.S. Departments of Energy and Interior entered into an agreement with the Republic of the Marshall Islands and the Local Rongelap Government that re-established radiation protection standards as a major element for the re-settlement of Rongelap. This agreement was reviewed by the U.S. National Academy of Sciences in 1994 and found to be viable. According to the Academy: "A crucial provision of the MOU is that resettlement will occur only if *no person* returning to Rongelap and subsisting on a native-foods-

only diet will receive a calculated annual whole-body radiation dose equivalent of more than 100 mrem above background."

In 2006, a radiological expert for the people of the Rongelap Atoll reported that the 100 millirem limit would be exceeded based on a local food only diet, if potassium fertilizer were not repeatedly applied. Apparently, this was not done for the southern islands of the atoll where local food is obtained.

Despite this warning, the Departments of Energy and Interior did not take steps to ensure this would be done, in accordance with the 1992 agreement. Give the long and unfortunate legacy of nuclear testing it appears that this critical element of safety was lost in the shuffle.

Until the U. S. Government can assure that steps to mitigate doses below 100 millrem are demonstrated by applying potassium fertilizer, efforts to force the Rongelap people back to the home is unjustified and unfairly places the burden of protection on the Rongelap people. It appears that DOE and Interior have quietly crept away from the 1992 agreement, without verifying that its terms and conditions to allow for safe habitability will be met.

Moreover, the 100 millirem limit stipulated in the agreement, should have a safety margin, in which the doses fall beneath this limit to encompass uncertainties. Keep in mind that the limit set for the general public in the U.S. by the EPA is 15 millirems. DOE is self-regulating and has a public exposure limit four times greater. However, DOE is required under the Superfund program to meet the 15 millirem limit as it proceeds with cleanup of weapons sites.

Background

Between 1946 and 1958, the United States exploded 66 nuclear weapons into the atmosphere and underwater in the Marshall Islands. The tests were conducted on the northwestern atolls of Bikini and Enewetak. Twenty-three of the tests were conducted at Bikini and the remaining 43 were conducted at Enewetak. Although the period of testing spans 12 years, the tests were done in series that occurred mostly during even years and lasted two to three months. (One other test was conducted during Operation Hardtack I. This test, named Yucca, occurred in April 1958 was detonated northeast of Enewetak from a balloon at a height of approximately 86,000 feet.)

These tests have created significant damage to the environment, natural resources and health of the Marshall Islands people. For instance by 1954, the U.S. was compelled to detonate nuclear weapons from barges because, *"high yield thermonuclear tests were blowing vast holes in the reefs at Bikini and Enewetak... otherwise the U.S. test program would soon run out of islands."* [1]

The Bravo Explosion

Between 1946 and 1958, as a result of nuclear weapons testing, the Marshall Islands sustained significant damage and radiological contamination. The people of Bikini and Enewetak were placed into exile by the U.S. Government so that their atolls could be used to explode nuclear weapons. The tests were conducted joint Department of Defense (DOD)/Atomic Energy Commission (AEC) Task Forces (JTF). The commander of the JTF was a military officer who was given authority to act for the AEC. AEC staff plus staff from its weapons laboratories in Los Alamos New Mexico, and Livermore California served as technical and safety advisors to the JTF commander. Final decisions were made by the JTF commander on behalf of the DOD and AEC.

Other Marshallese were occasionally evacuated temporarily but, for the most part were left on their atolls. On March 1, 1954, the detonation of an estimated 15 megaton thermonuclear weapon, known as "Bravo" took place – as part of the "Castle" test series. According to the U.S. Radiochemistry Society, "***the Bravo test created the worst radiological disaster in US history*** [Emphasis added]*....the yield of Bravo dramatically exceeded predictions, being about 2.5 times higher than the best guess and almost double the estimated maximum possible yield (6 Mt predicted, estimated yield range 4-8 Mt).*"[2] The bomb was over 1000 times more powerful than those exploded over Hiroshima and Nagasaki in 1945. The Bravo crater in the atoll reef had a diameter of 6,510 ft, with a depth of 250 ft.[3] The cloud top rose and peaked at 130,000 feet (almost 40 km) after only six minutes. Eight minutes after the test the cloud had reached its full dimensions with a diameter of 100 km, a stem 7 km thick, and a cloud *bottom* rising above 55,000 feet (16.5 km), and after 10 minutes had a diameter of more than 60 miles. [4] See Figure 1.

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[1] Radiochemistry Society, U.S. Nuclear Tests, Operation Castle, Pacific Proving Ground, http://www.radiochemistry.org/history/nuke_tests/castle/index.html

[2] Ibid.

[3] Ibid.

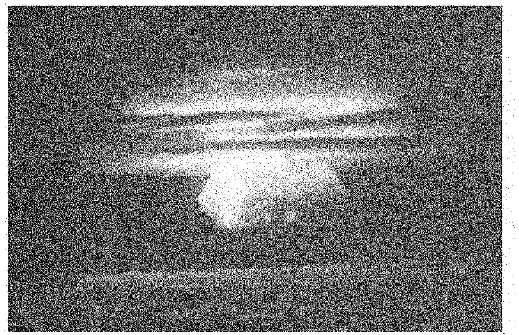

Figure 1. Bravo Test March 1, 1954
Source: U.S. Department of Energy

Intense radioactive fallout from the cloud was carried eastward and severely contaminated a Japanese commercial fishing boat and the atolls of Rongelap, Alinginea, Rongerik, and Utirik, some 200 miles away. About five hours after detonation, fallout began to deposit on the Rongelap Atoll. The fallout was so heavy that the Rongelap people, who had never seen snow, thought it was snowing. Children played in the radioactive powder, and no warning was issued by the JTF. *"We saw a flash of lightening in the west like a second sun rising,* "Anjain said in 1980. *"we heard a loud explosion and within minutes the ground began to shake. A few hours later radioactive fallout began to drop on the people, into drinking water, and on the food. The children played in the colorful ash. They did not know what it was and many erupted on their arms and faces."*[5]

About 50 hours after the explosion, the Navy evacuated the Rongelap people. About 24 hours later residents of Uterik were evacuated. Within the first 48 hours following evacuation two Rongelap people began to experience symptoms of vomiting. [6]With two to three weeks the exposed people began to exhibit a wider range of symptoms from radiation injury, including hair loss, skin and mucous membrane lesions, and significant blood changes.[7] At the time of the evacuation, the external penetrating radiation exposure (gamma) rate, one hour after the fallout on Rongelap, was

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[4] Ibid.

[5] National Committee for Radiation Victims, ed. Invisible Violence, Proceedings of the National Citizen's Hearings for Radiation Victims, April 10-14, 1980, p. 19.

[6] Naval Station, Kwajalein, to AEC, Washington, 15 March 1954, Joint Committee on Atomic Energy , General Subject Files, Box 80, Weapons Tests Pacific Proving Ground (Castle) 1954, p. 51, RG 128, NARA.

[7] Memorandum by Ed Heller, 23 Mar 54, JCAE General Correspondence, Box 712, "Weapons Tests (Eniwetok) 19541955," RG 128, NARA

~3.51to 35 roentgen (R) per hour. [8] Total-body exposures were large enough to cause tissue destruction. *"Our people began to be very sick,* "John Anjain remembered. *"They vomited, burns showed on their skin, and people's hair began to fall out."*[9] (See figures 2.)

The people on Rongelap sustained the highest average external doses. In 1956 the AEC researcher estimated the total body external penetrating dose to Rongelap residents was 175 rad (radiation absorbed dose).[10] In 1985, the estimated dose increased to 190 rads, [11] and by 2000 the research done for the U.S. Centers for Disease Control estimated that the total-body dose to the Rongelap people from the Bravo test and other subsequent tests in the Castle series in 1954 was 202 rads. [12] (See Table 1.) This is more than three times the estimated external dose to the most heavily exposed people living near the Chernobyl nuclear accident in 1986. [13] According current risks derived by the National Research Council's. Advisory Committee on the Biological Effects of Ionizing Radiation (BEIR VII) the external dose received by the people of Rongelap would result in a 100 percent probability of contracting a radiogenic cancer. [14] Internal doses particularly to radioiodine were quite high. Dose estimates were derived from a single pooled urine sample taken in 1954. In 1964, AEC scientists estimated that a child 3-4 years old received a thyroid dose in the range of 1,200 to 5,200 rad.[15] By comparison the highest doses from radioiodine to children living near the Chernobyl reactor in a heavily contaminated area were estimated at 430 rads.[16]

Figure 2 Fallout dose contours originating from the Bikini Atoll in the Marshall Islands from the Castle-Bravo test on March 1st, 1954.

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[8] U.S. Atomic Energy Commission, University of Washington, Laboratory of Radiation Biology, Gamma Dose Rates at the Rongelap Atoll, 1954-63, May 1965, http://worf.ch.doc.gov/data/ihp1d/67528c.pdf

[9] Ibid.

[10] U.S. Atomic Energy Commission, Ionizing Radiation on Human Beings, a report on the Marshallese and Americans accidentally exposed to radiation from fallout and a discussion of radiation injury in the human being, July 1956. http://worf.ch.doc.gov/data/ihp2/7548_.pdf

[11] Edward Lessard et al, Thyroid-absorbed dose for people of Rongelap, Utrik, and Sifo on March 1, 1954, Brookhaven National Laboratory, U.S. Department of Energy, BNL-51882, 1985.

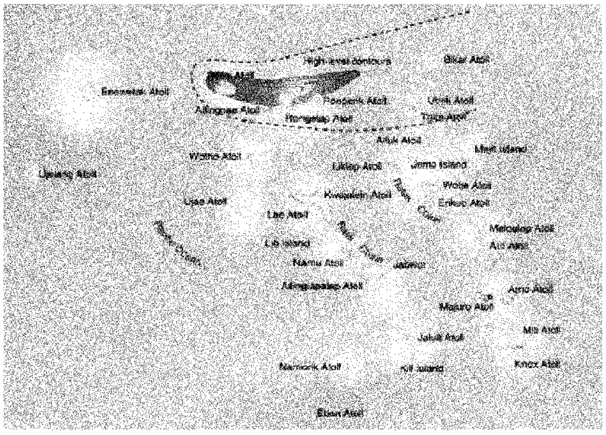
[12] Robert C. Whitcomb, Reconstruction and Analysis of Cesium-137 Fallout Deposition Patterns in the Marshall Islands, University of Florida, U.S. Centers for Disease Control, 2000 (Hereafter known as CDC 2000)

[13] The Health Physics Society, University of Michigan. http://home.comcast.net/~john.kimball1/BiologyPages/R/Radiation.html

[14] Evan Douple, Rick Jostes, Summary of BEIR VII, National Research Council, Presentation to CRCPD Annual Meeting 2006, "On Average, assuming a sex and age distribution similar to that of the entire U.S. population, the BEIR VII lifetime risk model predicts that approximately 1 person in 100 would be expected to develop cancer (solid cancer or leukemia) from a dose of 100 mSv above background.." http://www.crcpd.org/AnnualMeeting-06/Manuscripts/SUMMARY_OF_BEIR_VII.pdf#search=%22doubling%20dose%20BEIR%20VII%22

[15] Ralph H. James, Estimate of Radiation Dose to Thyroids of the Rongelap Children Following the Bravo, Event. Lawrence Livermore National Laboratory, December 16, 1964. http://worf.ch.doc.gov/data/ihp1a/1299_.pdf

[16] Gavrilin, Y. et al. Individual thyroid dose estimation for a case-control study of Chernobyl-related thyroid cancer among children of Belarus-part I: 131I, short-lived radioiodines (132I, 133I, 135I), and short-lived radiotelluriums (131MTe and 132Te). Health Physics, 2004 Jun; 86(6):565-85.



Source: U.S. Department of Energy

Table 1 Cumulative External Radiation Doses from the Castle Test Series

Atoll&Island	Bravo	Romeo	Koon	Union	Yankee	Nectar	Total
Ailinginae	60000	3400	3300	8	600	70	67000
Ailinglaplap	7.2	140	100	8	0	0	255
Ailuk	5000	410	110	100	500	20	6140
Arno	60	200	300	8	25	1.3	594
Aur	40	200	50	8	40	2.6	341
Bikar	60000	3000	1200	650	1700	150	67000
Ebon	20	250	50	8	25	0	353
Erikub	390	200	50	0	0	6.5	647
Jaluit	20	300	70	8	0	2.6	401
Jemo	1200	410	130	18	200	20	1978
Kili	20	200	70	0	0	1.3	291
Kwajalein	150	480	250	12	320	17	1235
Lae	5.5	12	12	7.5	78	95	125
Likiep	1700	170	80	30	200	16	2196
Maj uro	200	200	50	20	0	1.3	471
Maloelap	350	120	50	0	25	4	549
Mili	60	160	200	20	0	1.3	441
Namorik	20	160	70	2	0	0	252
Namu	1.8	90	100	0	25	0	216
Rongelap	180000	11000	6000	3400	1700	300	202000
Rongerik	190000	9000	5000	550	1400	280	206000
Taka	15000	800	1000	120	380	50	17000
Taongi	280	60	9.5	10	10	--[a]	370
Ujae	6	32	17	9.5	48	1.4	114
Ujelang	85.4	--[a]	176	52	142	--[a]	455
Utirik	22000	1200	700	100	330	50	24000
Wotho	250	270	110	55	95	4	784
Wotje	1800	300	200	13	220	10	2543

Source: CDC 2000

The outside world first learned of Bravo's disastrous effects two weeks after the blast when a Japanese tuna trawler, Fukuru Maru (the Lucky Dragon) arrived home. The ship was 90 miles east of the explosion. By the time the shipped returned, the entire crew was suffering from radiation sickness. Seven months after the blast they remained in the hospital receiving blood transfusions. The tuna aboard the "Lucky Dragon" were extremely contaminated. This, as it turned out, was not unusual. In 1954 Japanese monitoring programs showed that 683 boats had contaminated fish in their holds. About one out of every eight inspected boats had contaminated fish aboard. The Japanese government was forced to destroy over one million pounds of contaminated fish. By the end of September a crew member of the "Lucky Dragon" died from acute radiation syndrome.

Since that time, the U.S. Government officially maintains that the "Bravo" fallout tragedy was an unfortunate accident, due to an unexpected in the winds. It was planned that the bomb cloud would be blown to the west and north. However, for unexpected reasons, the wind blew east.

The official U.S. position on the "Bravo" test fallout has been challenged by the Air Force weathermen stationed in the fallout path, who claim they warned about a wind shift, several hours before detonation. On April 1, 1982, the DOD's Defense Nuclear Agency (DNA) released an official history of the "Castle" series which revealed that test planner knew during test countdown that the winds were blowing towards Rongelap. [17]Additionally, Dr. Merrill Eisenbud, the Director of the of the AEC's Health and Safety Laboratory, who also served as a scientific member of the "Bravo" Joint Task Force, wrote;

> *"There are many unanswered questions about the circumstances of the 1954 fallout. It is strange that no formal investigation was ever conducted. There have been reports that the device was exploded despite an adverse meteorological forecast. It has not been explained why an evacuation capability was not standing by, as had been recommended, or why there was not immediate action to evaluate the matter when the Task Force learned (seven hours after the explosion) that the AEC Health and Safety Laboratory recording instrument on Rongerik was off scale. There was also an unexplained interval of many days before the fallout was announced to the public."*[18]

Gordon Dunning, an AEC radiation safety official noted months before the Castle tests, that the *"main objection to evacuation is the high costs and the logistic problems presented in supporting such an operation."* [19] In a press release, when the U.S. Government did finally announce the aftermath of the "Bravo" test, the Atomic Energy Commission stated that: *"United States personnel and 236 residents were transported from neighboring atolls…according to plan as a precautionary measure. These individuals were unexpectedly exposed to some radioactivity. There were no burns. All were reported well. After completion of the tests, the natives will be returned to their homes."* [20] Other than the fact that the people were evacuated, all other the claims in the press release were false.

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[17] Edward Martin, Richard H. Rowland, Castle Series, 1954, U.S. Department of Defense, Defense Nuclear Agency, Technical Report, P. 202. http://worf.eh.doe.gov/data/ihp1c/0858_a.pdf

[18] Merrill Eisenbud,, An Environmental Odyssey: People, pollution and the politics in the life of a practical scientist, Seattle, WA; (University of Washington Press: `1990)

[19] Marshall Island Chronology p. 7

[20] *Marshall Islands: A Chronology--1944-1978* (Honolulu: Micronesia Support Committee, 1212 University Ave., Honolulu, HI 96826), p. 4.

The Legacy of Fallout

The "Bravo," test was one of six large nuclear weapons tests conducted between February 28 and May 14, 1954, which released about 4.2 billion curies of Iodine-131, and 4.9 million curies of cesium-137.[21] The Castle series produced more than half of the total amount of these radionuclides from all tests in the Marshall Islands. [22] See Table 2. By comparison, the amount of Iodine 131 and Cesium-137 released by the Castle test series was 475 times greater and 2.5 times greater, respectively, than from the 1986 Chernobyl accident.[23] The amount of Iodine-131 released from the Castle test series was nearly half of all released from Marshal Island tests[24] and more than 28 times greater than released from all nuclear weapons tests conducted at the Nevada Test Site in the United States. [25] See Table 2) Although the primary focus of the effects of radioactive fallout has been on the Bravo test, a 2000 review done for the U.S. Centers for Disease Control indicates that radioactive fallout from tests in the Castle, Redwing, and Hardtack series deposited Cesium-137 on Rongelap.[26] (See Tables 3 and 4) In 1958 the highest air concentration for Iodine-131 (125.5 pCi/m3) outside of the test areas, for the Hardtack 1 test series, was measured on Rongelap [27]– 25 percent above the EPA's current exposure standards for the U.S. public. [28]

Table 2 Production of Radioactivity from the Castle Series
(Fission Yield of 62 percent)*

Test	Yield	Iodine 131**	Cesium-137***
Bravo (March 1, 1954)	15 megatons (Fission Yield 9.3 mt)	1,395,000,000 Ci**	1,488,000 Ci
Romeo (March 27, 1954)	11 megatons (Fission yield 6.82 mt)	1,023,000,000 Ci	1,091,000 Ci
Koon (April 7, 1954)	0.110 megatons (fission yield 0.682 mt)	102,300,000 Ci	109,120 Ci
Union (April 26, 1954)	6.9 megatons (Fission yield 4.23 mt)	654,000,000 Ci	676,800 Ci

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[21] CDC 2000

[22] Ibid.

[23] National Research Council, Radiation Dose Reconstruction for Epidemiologic Uses, National Academy of Sciences Press. P. 105.

[24] CDC 2000. (Pacific Proving Ground tests were estimated to release 9 billion Ci of I-131 based on 60,246 kilotons of fission yield.)

[25] CDC 2000

[26] CDC 2000

[27] U.S. Atomic Energy Commission, Memorandum to: John L. Dunning, Director, Division of Biology and medicine, From: Gordon Dunning, Health Physics Branch, and October 15, 1958. http://worf.eh.doe.gov/data/ihp1b/5638_.pdf

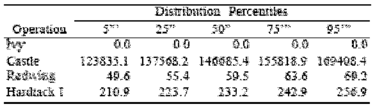
[28] U.S. Agency for Toxic Substances and Disease Registry, Case Studies in Environmental Medicine, November 2002, P. 31. http://www.atsdr.cdc.gov/HEC/CSEM/iodine/docs/iodine131.pdf#search=%22The%20federal%20standard%20for%20Iodine-131%20in%20air%20is%20100%20pCi%2Fm3.%22

Yankee (May 5, 1954)	13.5 megatons (Fission yield 8.37)	1,255,500,000 Ci	1,339,200 Ci
Nectar (May 14, 1954)	1.69 megatons (Fission yield 1.05 mt)	157,500,000 Ci	168,000 C
TOTAL	48.2 megatons (Fission yield 29.8 mt)	4,229,800,000 Ci	4,872,120 Ci

* Source: CDC 2000

** NCI 1997 (150,000 Ci I-131 per kiloton)*** CDC 2000 (160,000 Ci Cs-137 per megaton)

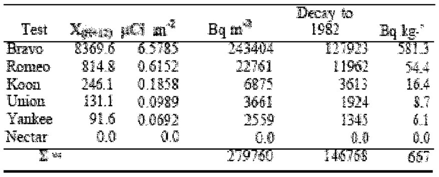
Table 3. Estimated Cesium-137 Deposition On Rongelap From 1954-58



	Distribution Percentiles				
Operation	5th	25th	50th	75th	95th
Ivy	0.0	0.0	0.0	0.0	0.0
Castle	123835.1	137568.2	146685.4	155818.9	169408.4
Redwing	49.6	55.4	59.5	63.6	69.2
Hardtack I	210.9	223.7	233.2	242.9	256.9

Source CDC 2000

Table 4 Estimates of Cs-137 Deposition at Rongelap from the Castle Series



Test	$X_{g(137)}$	µCi m^{-2}	Bq m^{-2}	Decay to 1982	Bq kg^{-1}
Bravo	8369.6	6.5785	243404	127923	581.3
Romeo	814.8	0.6152	22761	11962	54.4
Koon	246.1	0.1858	6875	3613	16.4
Union	131.1	0.0989	3661	1924	8.7
Yankee	91.6	0.0692	2559	1345	6.1
Nectar	0.0	0.0	0.0	0.0	0.0
Σ =			279760	146768	667

CDC 2000

The Bravo test sparked world-wide protect against atmospheric nuclear weapons testing By the late summer of 1956 the issue of fallout was being covered on nation-wide television at the Democratic National Convention. The Democratic Party was campaigning to halt H-bomb tests. Presidential candidate Adlai Stevenson, relying on the information of AEC critics, cited the genetic and strontium 90 hazards from tests.

Nuclear testing advocates Edward Teller and Ernest O. Lawrence responded with a joint statement depicting radioactive fallout as *"insignificant."*[29] Institutional differences over dangers of fallout became quite clear during the election. On one side were the AEC and its scientists, such as Commissioner Willard Libby, Shields Warren, John Bugher, Teller, and Lawrence. The other side included several prominent scientists from the California Institute of Technology--Linus Pauling, E. B. Lewis, A. H. Sturtevant, and George Beadle. Although Stevenson lost the election, his campaign provided a national forum for the fallout debate.

The Marshall Islands were in the category of a protective "trust territory" arrangement engineered by the United States Government. The U.S. had signed a United Nations trusteeship agreement under which the American government had pledged to *"promote the social advancement of the inhabitants, and to this end shall protect the rights and fundamental freedoms of all elements of the population without discrimination; protect the health of the inhabitants.* "[30]

Following the exposure and evacuation of the Rongelap people the U.S. AEC and Defense department initiated several radiation-related research efforts, which were aimed at understanding the immediate aftermath of the fallout from Bravo, and subsequent radiological contamination, human health effects, dose estimation, and radioecological implications, particularly with respect to consumption of contaminated foods.

In May 1954, Urine samples were taken from the Rongelap people and flown to the Los Alamos Scientific Laboratory for analysis -- revealing that plutonium levels for three people were found to exceed the permissible limit for workers.[31]

Comprehensive information taken from all exposed Rongelap people was analyzed. A study known as "Project 4.1,"of the Castle test series, stated:

> *"the exposure of these individuals afforded a unique opportunity to study the effects of radiation in man and it was considered desirable to supplement the clinical studies with as much information as possible concerning the period of exposure.* [This research] *detailed information concerning the clinical observations and therapy, the external lesions, the hematological studies and the internal radioactive contamination of the 82 native inhabitants of Rongelap and Alinginea Atolls*... [including]*: (1) a detailed sketch of Rongelap Village (2) a brief description of the islanders' homes and their food and water supplies; (3) the various family groups and the location of their dwellings; (4) events during fallout (5) the evacuation and decontamination procedures;*

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[29] *New York Times*, June 21, 1956.

[30] "United Nations Trusteeship Agreement for the United States Trust Territory of the Pacific Islands," Article 6; reprinted in Greg Dever, M.D., *Ebeye, Marshall Islands A Public Health Hazard* (Honolulu: Micronesia Support Committee), p. 25.

[31] U.S. Atomic Energy Commission ,Gordon Dunning to John C. Bugher, 21 May 54, Rongelap twxs, 1954 re: Fallout following Bravo, RG 326, DOE Archives, Germantown Maryland

and (6) readings of the external radioactive contamination of these individuals.[32]

In the after math of the Bravo test, by November 1954, the AEC drafted new "Policies Regarding Radiological Safety of the Public During Weapons Testing at the Nevada Proving Grounds," in which a dose of 30 roentgens, more than three times less than received by the Rongelap people, would trigger evacuation. [33] By November 1956, dose limits to the public near the Nevada test site were reduced to 3.9 roentgens for any year, [34] – 48 times less than received on Rongelap.

Studies of the distribution and concentration of radiological contamination and the uptake of radionuclides in biota commenced within less than a month after the 1954 Bravo test.[35] A year after the test researchers from the Naval Radiological Defense Laboratory (NRDL) found, "significant amounts of radioactive contamination." The highest concentrations were in marine foods taken from the Northern Rongelap Lagoon, particularly with respect to radioreuthenium, and rhodium, Zirconium-95, niobium. In terms of terrestrial contamination the dominant radionuclide was Cesium-137. [36]

In this context, the U.S. government decided to return the Rongelap people to their homeland in 1957. But, humanitarian concerns were not necessarily behind the government's desire to return them to the atoll. According to the minutes and transcripts of the meetings of the AEC's Advisory Committee on Biology and Medicine (ACBM)in 1956 the people of Utrik and Rongelap were returned despite the fact that food contamination in particular was significantly higher than acceptable for U.S. citizens, and that the risks of congenital malformations from fallout could be significant. But, the Committee recognized that the Rongelap people might still incur substantial radiation doses if they returned.

In his presentation to the Committee in January 1956, Dr. Merill Eisenbud, then head of the AEC's Health and Safety Laboratory, commented that the people in the Northern Marshall Islands provided unique opportunity for human research.

> *"They had been living on that island [Utrik]... is by far the most contaminated place in the world and it would very interesting to go back and get good environmental data, how many per square mile, what isotopes are involved and a sample of food changes in many humans through their urines, so as to get a measure of the human uptake, when people live in a*

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[32] Robert Sharp and William Chapman, Report to the Scientific Director, Exposure of Marshall Islanders and Military Personnel to Fallout. Operation Castle, Project 4.1 Addendum, March 1957

[33] U.S. Atomic Energy Commission, Memorandum to: Joe Sanders, Assistant Manager Los Vegas Field Office. From: Gordon Dunning, Division of Biology and Medicine, Subject: Review of Policies for NVP [Nevada Proving Ground], November 5, 1954. http://worf.ch.doc.gov/data/ihp1d/77883c.pdf

[34] U.S. Atomic Energy Commission, Radiological Safety Criteria for the Nevada Test Site, November 13, 1956. http://worf.ch.doc.gov/data/ihp1c/8757_.PDF

[35] Applied Fisheries Laboratory, University of Washington, 'A Radiological Study of Rongelap Atoll, Marshall Islands, during 1954-1955," UWFL-42. http://worf.ch.doc.gov/data/ihp1c/7955_.PDF

[36] Residual Contamination of plankton, Animals, Soil, and Water of the Marshall Islands One Year following Operation Castle Flaw USNRDL-454, p. iii, McCraw, Box 9, Radiological Sumy, RG 326, DOE Archives

contaminated environment… Now, data of this type has never been available. ***While it is true that these people do not live, I would say, the way Westerners so, civilized people, it is nevertheless also true that they are more like us than the mice."*** *[Emphasis added.]*[37]

At the ACBM's 56th Meeting In May 1956, there was further discussion about Rongelap people serving as research subjects. According to minutes of the meeting Committee member Bentley Glass stated.

> *"This is an ideal situation to make your genetic study. It is far more significant than anything you could ever get out of Hiroshima and Nagasaki."*[38]

In November 1956 the Committee issued a formal statement, which made it clear that the moving people off Rongelap, once they were resettled would adversely impact nuclear weapons testing:

> *"It has been suggested by Dr. Conard that they be permitted to return in April or May 1958. …It was agreed that because of the already relatively high exposure to which these natives had already been subjected, limiting their exposures in terms of now on was unrealistic; but on the other hand, the psychological effect of permitting them to receive more radiation than our own people, could be subject to criticism. A further discussion resulted in the decision to prepare a statement expressing the Committee's opinion. Statement was subsequently prepared as follows:*
>
> *It is moved that the ACBM approve the Division of Biology and Medicine's proposal to return the Rongalpese to their native atoll. However, it is the opinion of the ACBM that if it should become necessary to re-evacuate because of further tests, there would result world opinion unfavorable to the continuation of weapons testing."*[39]

The AEC's own reports later conceded severe health damage. Out of twenty-two Rongelap children exposed to the fallout from the Bravo test, nineteen have had thyroid nodules surgically removed.[40]

Very soon after the Rongelap and Utirk people were evacuated, the U.S. Military and the Atomic Energy Commission performed regular radiological monitoring and surveillance of the contaminated areas. From 1954 to 1963, external gamma dose rates were continuously measured using aerial radiological and hand held instruments. These data indicate that while background levels of external penetrating radiation continued to decline as a result of radioactive decay of short-lived fission products, such as Reuthenium 106, levels were high enough to deliver annual doses on Rongelap Island during this period, that were hundreds to hundreds to thousands of time greater than current public radiation protection standards permit. [41] [42] [43] The year the Rongelap people were returned to their Atoll, internal assimilation of Cesium-137 from the uptake of contaminated food rose by 60 times to 680 nanocuries, [44]more than twice the level permitted for workers at Atomic Energy Commission nuclear weapons sites at the time. [45]

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[37] U.S. Atomic Energy Commission, Advisory Committee on Biology and Medicine, Transcript, January 13, 14, 1956.

[38] U.S. Atomic Energy Commission, Advisory Committee on Biology and Medicine. Minutes, May 26, 27, 2006.

[39] U.S. Atomic Energy Commission, Advisory Committee on Biology and Medicine, Minutes of the 58th Meeting, November 16, 17, 1956.

[40] Gaff Johnson, "Paradise Lost," *Bulletin of the Atomic Scientists*, December 1980, p. 28. The article quotes a 1977 federally funded study by Brookhaven National Laboratory, stating: "Recently about 50 percent of the exposed Rongelap people showed hypothyroidism without clinical evidence of thyroid disease, a finding that probably portends trouble ahead."

[41] Arthur D. Welander, Radiobiological Studies of the Fish Collected at Rongelap and Allinginea Atolls, July 1957, University of Washington Applied Fisheries Laboratory, March 5, 1958. http://worf.eh.doe.gov/data/ihp1c/7850_.PDF

Moreover, the "Hardtack" test series in 1958 resulted in more fallout on Rongelap, which added to the external doses and measurable increases in radioactive assimilations, from contaminated food. [46]

Beginning in 1962, the people of Rongelap began experienced thyroid nodules. Over the years, nineteen out of twenty-two exposed Rongelap children had nodules removed surgically. By the late 1970's concern began to mount over an increase in thyroid cancer among the people of Utrik who were exposed to less radiation that the people of Rongelap. This concern was noted in 1977 by Dr. Konrad Kotrady, DOE's resident physician in the Marshall Islands. According to Kotrady:

"The theory put forth that Utrik received low radiation, so a detailed follow up was not necessary. Now the facts of thyroid cancer at Utirk have strongly shown the theory is wrong, it also further emphasizes to the people [of the Marshall Islands] that the United States really does not know what the effects of radiation are."[47]

By 1997 DOE-sponsored researcher reported:

The most significant complication of the exposure bas been found to be thyroid disease due to the ingestion of radioactive iodides from the fallout. In 1963 the first thyroid nodules were found in Rongelap subjects and in 1969 in Utirik. Non-neoplastic adenomatous nodules were associated with higher doses of radiation and neoplastic nodules developed in individuals receiving lower doses of radiation. Women were more susceptible to the development of palpable thyroid nodules than men.[48]

That same year DOE researchers concluded that external radiation doses to the people of Rongelap would exceed the 30-year dose of 5 rem recommended for protection of the U.S. public.[49]

In 2005, the National Cancer Institute reported to the U.S. Senate Committee on Energy and

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[42] Op Cit Ref. 2. Figure 2. Dose rates between 1957 when the Rongelap people returned to 1963 were between 0.5 millioentgens per hour to 0.02 miliroengtens per hour.
[43] 10 CFR 40
[44] Robert A. Conard, et al, Medical Survey of Rongelap People Five and Six years After Exposure to Fallout, Brookhaven National Laboratory, U.S. Atomic Energy Commission, September 1960. http://worf.eh.doe.gov/data/ihp1a/3221_.pdf
Ibid.
[45] National Bureau of Standards, Maximum Permissible Body Burdens and Concentrations of Radionuclides in Air and Water for Occupational Exposure, NBS Handbook No. 69
[46] Ibid.
[47] Kotrady, Konrad, M.D. "The Brookhaven Medical Program to Detect Radiation Effects in Marshallese People: A Comparison of the Peoples' vs. the Program's
Attitudes." Jan.1,1977

[48] Jean E. Howard et al, Thyroid Disease Among the Rongelap and Utrik Population – A Update, Health Physics, 73(1):190-198; 1997

[49] N.A. Greenhouse and R.P. Miltonberger, External Radiation Survey and Dose Predictions for Rongelap, Utirik, Rongerik, Ailuk, and Wotje Atolls, Brookhaven National Laboratory, BNL 50797, December 13, 1977, P. 9

Natural Resources that, among the 14,000 inhabitants who live in the Marshall Islands, an estimated 500 cancers would result from radioactive fallout. The risk of contracting cancer for those exposed to fallout was greater than one in three.

"About 400 of the 500 estimated radiation-related excess cases of all cancers may be expected to develop in the roughly 35 percent of the exposed population that was under 10 years of age at exposure. Since this age group is mainly between 50 and 60 years of age at present, most of their baseline and excess cancers are projected to occur in the next few decades as they reach ages at which baseline cancer rates are normally highest... ***Disproportionately higher excess cancer rates are expected to occur in the relatively small proportion of the population with the highest doses, particularly those exposed on the atolls of Rongelap and Ailinginae."*** *[Emphasis added.]*[50]

Safeguard C and the Takeover the Marshall Islands Health and Environmental Programs by the Nuclear Weapons Program

In the fall of 1982, during the final stages of negotiations over the Compact of Free Association, the U.S. Department of Energy (DOE) placed the Marshall Islands (RMI) health and environmental research program under the direct control of the DOE nuclear weapons program. At the time, the United States nuclear arsenal was undergoing a steep build up. As part of this effort, the readiness capability established in 1963, known as Safeguard C, to resume atmospheric nuclear weapons testing in the Pacific region was given a high priority. In this regard, the Marshall Islands medical and environmental programs became part of the Safeguard C readiness program. And the head of the Safeguard C program was named as the primary DOE representative to the Compact negotiations.

Once under the control of the Safeguard C program in the DOE's Office of Defense programs, key policies and practices were quietly terminated – most notably the adherence to previously adopted radiation exposure standards for the cleanup of the Atolls and restrictions on the consumption of contaminated foods. Instead, the DOE advised Compact negotiators that radiation protection should be based on choices made by the people of the Marshall Islands about the risks and benefits – as explained by the DOE.

DOE, and the Compact negotiators had now regressed back to a 1950's-era policy adopted to allow their return the people of Rongelap to their home land in 1958 – namely that radiation protection standards for the American public were inappropriate for the Marshall Island population and that such use *"could establish an undesirable precedent for other situations of environmental contamination from nuclear explosives."*[51]

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[50] Letter to from; Andrew C. von Eschenbach, M.D. Director National Cancer Institute, To: Senators Pete Dominici, Chairman U.S. Senate Committee on Energy, April 24, 2005.

[51] Notes of Robert Alvarez, Professional Staff, U.S. Senate Committee Governmental Affairs, March 1991. (Hereafter known as Alvarez 1991)

This shift in policy by the U.S. Government in the early 1980's, was not made known to the RMI during the Compact negotiations. In 1979, a general policy banning nuclear tests in the Marshall Islands was agreed to by the United States representatives to the Compact negotiations. A year later, specific language was agreed to and was adopted as Section 314 of the Compact. The Safeguard C program was to initiate testing at the Johnston Atoll, but also included sea-launched nuclear missile tests in the Pacific, which could be near the RMI. Moreover, the logistical and diagnostic support to resume testing, including the deployment of nuclear warheads, would be carried by the same entity responsible for administering the medical and environmental programs in the RMI.

Upon lifting restrictions from eating contaminated foods, in 1982, DOE researchers found significant increases in internal radiation doses to Rongelap people – which reversed a decreased dose trend beginning in 1965. This was not brought to the attention f the Rongelap people, their elected representatives, the RMI, Compact negotiators or the U.S. Congress.

Nor were these changes not made known as part of the hearing record to the U.S. Congress, which held some 20 hearings about the Compact. It was only in 1991, that this information only came to light after an investigation was conducted by the U.S. Senate Committee on Governmental Affairs. As a result, the DOE removed the RMI medical and environmental programs from the control of the nuclear weapons program and entered into an agreement with the RMI, the elected leadership of Rongelap and the Interior Department in 1992, which re-established a standard-based context to define the terms and conditions of habitability on the Rongelap Atoll. In 1993, the U.S. Congress abolished the Safeguard C program.

On March 23, 1982, an Action Memorandum was submitted to the US. Secretary of Energy (DOE) requesting that the health and environmental research program of the Marshall islands be moved to the DOE's Office of Defense Programs – the nuclear weapons production and testing program. The rationale for this transfer was to integrate the health and environmental research into a readiness program to resume atmospheric nuclear weapons testing involving the Marshall Islands.

Known as "Safeguard C," this was one of four contingencies stipulated by the Joint Chiefs of Staff in 1963 as a condition of approval for the Limited Test Ban Treaty. The specific C details of Safeguard C were remained secret for several years. They included:

> *"The maintenance of the facilities and resources necessary to institute promptly nuclear tests in the atmosphere should, they be deemed essential to our national security or should the treaty or any of its terms be abrogated by the Soviet Union."*[52]

In June 1964, an agreement was made between the AEC and the Defense department to establish a Joint Nuclear Test Planning Group to implement this contingency. The group was replaced in 1968 by the 1968 revised National Nuclear Test Readiness Program (NNTRP). Since that time the

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[52] U.S. Atomic Energy Commission. Memorandum for McGeorge Bundy, Special Assistant to the President, Subject: Maintenance of Condition of Readiness Under a Test Ban Treaty, February 13, 1963 http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB94/tb46.pdf

NNTRP served as the institutional basis for maintenance of Safeguard C. According to previous secret testimony before the Congressional Joint Committee on Atomic Energy in October 1971 by AEC official, Herman Roser, "the proposed tests once authorized, would be carried out essentially as in the last atmospheric series, primarily in the Pacific Area."[53]

The basic requirements for Safeguard C were to be able to detonate nuclear weapons in the atmosphere with three months and to have a sustained program ready within a year. Since Safeguard C was designed to replicate the last Pacific test series in 1962, the resumption of testing would include a missile-launched high altitude detonation from the Johnston Atoll and an open-sea missile launch. Between 1965 and 1972, some 12 "Thor" missiles were launched at the Johnston Atoll without nuclear tips as part of maintaining the Safeguard C program.

The DOE delegated operational responsibilities to the Nevada Operations Office for management of Safeguard C. In Turn the Nevada Operations Office was responsible for assuring that the DOE's Pacific Area Support Office (PASO) in Hawaii carried out logistical and support responsibilities for Safeguard C. DOE and DOD used the same contractor to maintain this program, which was Holmes and Narver, which also operated cleanup and logistics for DOE in the Marshall Islands.

In 1982, Mr. Roser, in a March 23rd Memo, again invoked this contingency, now as Assistant Secretary for Defense Programs in the DOE to justify the transfer of the Marshall Islands health and environmental research program. Negotiations on the Compact of Free Association, then in their 13th year were nearing completion. The memo indicated urgency in affecting the transfer so that DOE's Marshall Islands *"programs will continue uninterrupted during status negotiations."*

The two page memo describes a "common" relationship between the Marshall Islands medical and environmental programs with Safeguard C. According to Roser:

"DP [Defense Programs] should assume policy direction and control of the DOE's Marshall Islands activities as a single coherent program... the technical resources that are in use in the Marshall Islands are largely weapons-program related, and most of DOE's logistic and support is common to the Safeguard C readiness program. Safeguard C... requires the U.S. to maintain the capability to resume atmospheric weapons testing."[54]

In an undated memo written sometime before the program was transferred in the fall of 1982, Dr. Charles Edington of the DOE's Office of Health and Environmental Research denounced this move:

"It is ludicrous to claim that the Marshall Islands program is an exercise in the expeditionary capability of the Safeguard C program and is related to U.S. capabilities to resume atmospheric testing... Such statements, if available to the press or the government of the Marshall Islands, would destroy whatever credibility the U.S. enjoys in the Marshalls and probably force the termination of the program... Such statements also lend credence to the claim that the U.S. is studying the Marshallese as 'guinea pigs'... Linkage of the medical and environmental

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[53] Alvarez 1991

[54] U.S. Department of Energy, Memorandum, To: The Secretary, From: Herman Roser, Assistant Secretary for Defense Programs, March 23, 1982

programs to possible resumption of atmospheric testing (implied to occur in the Marshalls) would lead to extreme political embarrassment in the status negotiations, the U.N. and the national and world press… Association of the health care and radiological monitoring programs to the weapons program and readiness capability destroys any pretense of objectivity and credibility."[55]

The 1978 Radiological Survey of the Northern Marshall Islands

In August 1978, the Department of Energy initiated its Radiological Survey of the Northern Marshall Islands. According to DOE:

"the purpose of the Northern Marshall Islands survey program is to provide documentation of the remaining radioactivity from nuclear testing and provide support data for an assessment of the radiation dose to people before the termination of the United States Trust Agreement.[56]

A primary motivation for this study stemmed from litigation brought by the people of Bikini (THE PEOPLE OF BIKINI ET AL VS. SEAMANS ET AL, CIVIL NO.75 -348, U.S.D.C., D Hawaii), who asserted that the U.S. government had not properly assessed the radiological conditions at Bikini comparable to that done for Enewetak in 1972-73.[57] According to DOE:

"During negotiations with the Department of Justice, the plaintiffs' legal counsel recognized that the surveys and evaluation of radiological conditions at BikiniAtoll were not as comprehensive as more recent work at Enewetak Atoll, and sought an aerial radiological survey of Bikini and other northern Marshall Islands… The proposed aerial survey uses the same equipment and procedures which were successfully employed at Enewetak Atoll in 1972-73. The people of Bikini feel they have been shortchanged because the U.S. conducted a highly visible, exhaustive survey, coupled with previous and planned ground surveys… If the aerial survey of the Northern Marshalls, including Bikini, is not conducted, the U.S. Government would be terminating the Trust Territory agreement without taking all prudent steps to evaluate the residual radiological contamination on the islands affected by the U.S. nuclear weapons tests.[58]

The survey was completed by the end of 1978, but only provided partial picture of the contamination problems facing the Rongelap people. This survey, by its very nature, was only a "snap-shot" in time and was, but the most recent of numerous aerial surveys performed over the Marshall Islands. Between 1946 and 1958 several aerial radiological surveys and extensive ground and biota monitoring were performed to measure and track radioactive clouds and fallout. [59] [60] [61] [62]

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[55] Alvarez 1991.

[56] U.S. Department of Energy, Radiological Survey Plan for the Northern Marshal Islands, August 22, 1978.

[57] Ibid.

[58] Ibid.

[59] U.S. Department of Defense, Joint Task Force 132, Fallout and Cloud Particle Studies, Operation Ivy, November 1952

[60] U.S. Atomic Energy Commission, Fallout Location and Delineation by Aerial Surveys, Operation Redwing, Project 2.64, 1956

[61] U.S. Department of Defense, Joint Task Force 194. Radiological survey of downwind atolls contaminated by BRAVO. JTF7. March 12, 1954.

[63][64] These studies should have been utilized and provided to the Rongelap people so as to fill important gaps in the 1978 survey such as short-lived radionucildes, "hot spots," soil and biota concentrations.

However, several aerial radiological surveys and related ground measurements during and shortly after the tests remained classified until after the Marshall Islands plebiscite approving the Compact on September 7, 1983. [65] [66] [67] [68] [69] In particular, a 1955 report, declassified on August 310, 1984, provided daily fallout maps with isoactivity contours, which clearly show that the Rongelap Atoll was in the direct path of radioactive fallout for all tests in the 1954 Castle test series. (See Figure 3)

Figure 3 Total Fallout from Castle Series July 1, 1954

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[62] US Weather Bureau, 1955. World-Wide Fallout from Operation Castle. U.S. Weather Bureau. NYO-4645 (Extracted Version) Washington, D.C. May 17,
1955.

[63] U.S. Department of Defense, Operation HARDTACK I, 1958. United States Atomic Nuclear Weapons Tests, Nuclear Test Personnel Review. DNA-6038F. Wash., DC. ,1982.

[64] Dunning, G.M. fed). Radioactive Contamination of Certain Areas in the Pacific Ocean from Nuclear Tests, U.S. AEC Report. 1957

[65] U.S. Department of Defense, Joint Task Force 132, Fallout and Cloud Particle Studies, Operation Ivy, November 1952 – declassified December 6, 1985.

[66] U.S. Department of Defense, Operation Greenhouse, Annex 9.3 Radiological Safety, 1951 – Declassified August 23, 1984.

[67] U.S. Department of Defense, Hardtack, Final Report, Task Group 7.4, 1958. Declassified August 20, 1986.

[68] U.S. Atomic Energy Commission, Fallout Location and Delineation by Aerial Surveys, Operation Redwing, Project 2.54, 1957 – Declassified April 10, 1988.

[69] US Weather Bureau, 1955. World-Wide Fallout from Operation Castle. U.S. Weather Bureau. NYO-4645 (Extracted Version) Washington, D.C. May 17, 1955. Declassified –August 31, 1984.

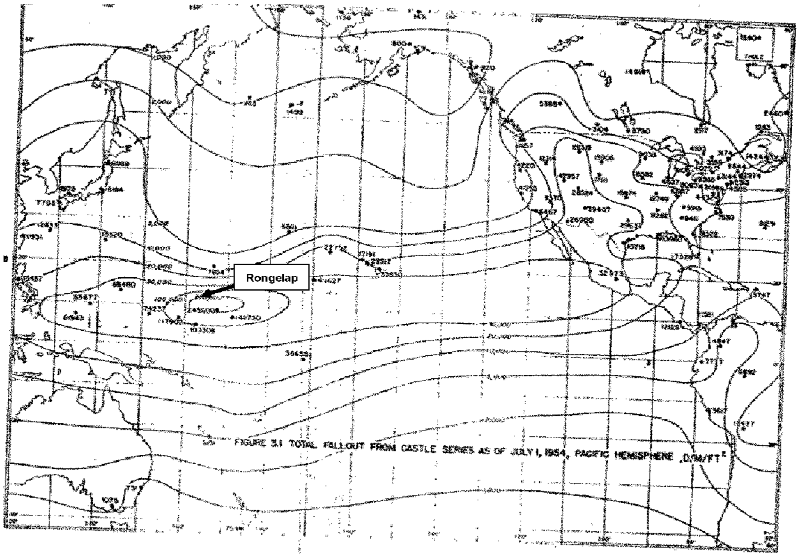

FIGURE 3.1 TOTAL FALLOUT FROM CASTLE SERIES AS OF JULY 1, 1954, PACIFIC HEMISPHERE, D/M/FT²

Source: NYO-4645

Additional data that would allow for estimations of radioactive releases from the explosions was not made part of the public record until after the 1978 survey was completed and as late as 1994. [70] [71] [72] Moreover, a comprehensive assessment of radiation dose would also have required a reconstruction of the quantities of radionuclides released from the tests, to validate aerial, terrestrial and biota measurements, most notably those from the 1954 Castle test series.

This is considered a basic criterion for radiation risk assessment along with several others, which the 1978 aerial radiological survey did not possess. From the late 1970's to the present, several radiation dose reconstruction studies have been done relative to public exposures from U.S. nuclear weapons test and production facilities. In each instance the scientifically credible estimate of the amount of radiation released, also known as the "Source Term," was considered essential.

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[70] Hicks, H. G. Calculation of the concentration of any radionuclide deposited on the ground by offsite fallout from a nuclear detonation. Health Physics 42:585-600. 1982.

[71] Hicks, H. G. Results of calculations of external gamma radiation exposure rates from local fallout and the related radionuclide compositions of selected U.S. Pacific events. Lawrence Livermore National Laboratory, Report UCRL-5505. Livermore. CX. 1984.

[72] England, T. R. and Rider, B. F. Evaluation and Compilation of Fission Product Yields. Los Alamos National Laboratory Report LA-UR-94-3 106. October 1994.

In 1995, the National Academy of Sciences identified several criteria for dose reconstruction of populations exposed to radiation from nuclear weapons activities. They include:

- *"All pertinent data relating to the source term and environmental pathways should be collected and evaluated. Insofar as possible, the original source data, rather than derived or summary information, should be used.*
- *Quality control should be required at all stages of data collection and evaluation. Where possible, alternative approaches should be used to estimate the components of the dosimetry (source term, environmental transport, metabolic disposition, behavioral variation).*
- *Best estimates of doses should be used rather than maximal doses; uncertainties in doses (defined by confidence intervals) also should be estimated.*
- *Biologic markers of dose, effect, and susceptibility should be considered."* [73]

None of these criteria were met by the DOE prior to or following the implementation of the Compact of Free Association.

In 2000 these data collected from previous aerial radiological surveys were analyzed in a study sponsored by the Centers for Disease Control, which provided a more through and comprehensive assessment of radiation doses, than that contained in the 1978 aerial survey.

For instance, the 1978 survey merely reported the dose-rates measured from the 13 islands surveyed. By contrast the 2000 CDC dose assessment reviewed aerial radiological surveys taken from 1954 to 1958, in addition to external and internal dose assessments, medical data, and detailed ground, and food contamination data, principally for Cs-137, collected through 1997. According to the CDC, the cumulative deposition of Cesium-137 was the highest on Rongelap than any other Marshall Islands Atoll – 210 times higher than from global fallout alone. [74]

No such comprehensive information was provided by DOE.

The DOE funding proposal prepared in May 1978 for the aerial survey clearly stated its utility was limited to assessing external penetrating radiation:

The surveys will provide "ground truth" data on ambient external gamma radiation levels on-island. This data will be used as the basis for calibration and normalization of aerial radiological monitoring by the E.G&G Corporation. The program will include detailed external radiation measurements with pressurization chamber and scintillation survey instruments and in situ gamma spectrometry on all islands of interest. Surface soil samples will be collected and analyzed for significant gamma emitters in order so make decay corrections for long term dose predictions

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[73] National Research Council, Commission on Life Sciences, Radiation Dose Reconstruction for Epidemiologic Uses, National Academy Press, (1995), Washington, D.C.

[74] CDC 2000, p. 113.

via the external radiation exposure pathway. [75]

Around the same time that DOE initiated the1978 aerial survey, Energy researchers also acknowledged that this effort was not adequate or sufficient.

"Environmental and personnel monitoring programs for the Marshallese people living at Bikini, Rongelap and Utrik Atolls must continue indefinitely in order to assess dose contributions to these people from residual radioactivity originally produced by U.S. nuclear weapons tests in the Pacific. ***Detailed assessments of the contributions of external gamma radiation have been made over the past two years, but identification of internal exposure pathways and determination of their radiological significance are subject to many variables which will require environmental and diet monitoring and bioassay programs for many years."*** [Emphasis added. [76]

DOE and the Compact of Free Association

Edington notes that Roger Ray, the person designated in the March 1982 from Roser to assume control of the Marshall Islands Health and environmental program as part of the Safeguard C program had already been named as the DOE representative to the Compact negotiations. Mr Ray was the Deputy for Pacific Operations (DPO) at the DOE's Nevada Operations Office. His duties included management of the logistic capability for DOE's activities in the Marshall Islands and the Safeguard C program. Mr Ray also served as coordinator for the evaluation and cleanup effort at the Enewetak Atoll. He was also involved in managing and assessing underground nuclear weapons tests in the United States during the early 1970's.[77]

Mr. Ray's involvement in nuclear weapons testing was quite extensive. In 1954, while on detail from the Defense Department to the AEC, Mr. Ray took part in the "Bravo" test in terms of providing diagnostic analysis of the weapon's performance. He also tool part in subsequent tests series in the Marshall Islands, Johnston Atoll and elsewhere in the Pacific. Immediately prior to joining the AEC in 1972, Mr. Ray served in the Office of the Assistant Secretary for Atomic Energy in the Defense Department. In this capacity, Mr. Ray was responsible for the implementation of Safeguard C activities including 12 missile tests at Johnston atoll (without nuclear tips) to assure test readiness capabilities.

According to Edington in April 1982, *"Roger Ray is the only person advising the Ambassador in these negotiations re: radiological issues... There has been essentially no briefing of or coordination with senior DOE management regarding future DOE interests in the Marshalls, or lack thereof, of which I am aware by Mr. Ray."*[78]

On April 30, 1982, Ray sought approval for a formal statement which he had already made on the record to the plenary negotiating session in which he claimed, *"none of the above mentioned activities* [DOE's heath and environmental programs] *has any defense, national security or*

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[75] U.S. Department of Energy, Marshal Islands Radiological Safety Program Review, May 21, 21, 1981. http://worf.eh.doe.gov/data/ihp1a/2810_.pdf

[76] Ibid.

[77] Alvarez 1991.

[78] Avarez 1991

intelligence function or significance." [79] This was not true.

Radiation Safety Policies in the Marshall Islands

Upon assuming control over the RMI heath and environmental programs, Mr. Ray relaxed radiological protection standards and practices that had been in place for several years. They included the elimination of exposure limits used for the cleanup of the atolls, lifting of food restrictions, and coordination of radiation protection with the U.S. Department of Interior and the Environmental Protection Agency – which is responsible for overall radiation protection of the America public. These policies and practices were mostly embodied in the environmental restoration program for the Enwetak Atoll and were also based on several years of experience in the cleanup and rehabilitation of the Bikini Atoll, which led to the aborted resettlement of the Bikini people.

In 1974, the U.S. adopted an exposure limit that was half the allowable dose to the American public at the time. The rationale for this was based on a lack of confidence in dose modeling and in exposure estimates containing numerous assumptions with little or no validation. Moreover, there was particular concern that the dietary practices of the resettled Marshallese were poorly known.

"The recommendations on radiological cleanup of weapons test debris are to be consistent with AEC radiological protection practices which rely on basic radiation protection standards and emphasizes the current requirement for maintaining radiation exposure as low as practicable." [80]

In particular the AEC Task Group specifically recommended that the annual exposure limit then in effect for the U.S. of 500 millirems be reduced to 250 millirem. In addition the group recommended that the 30-year dose be reduced from 5 rems to 4 rems – a 20 percent reduction.

This recommendation was adopted by the AEC on August 6, 1974 despite opposition by the Defense Department, and Roger Ray in the Office of Defense Programs. The DOD echoed the position taken in the 1950's by the AEC to return the Rongelap people to their atoll, despite excessive radiation levels, not acceptable in the United States;

> *"[the Defense Department] believes that radiation standards applicable to the general public are not appropriate for the small Enewetak population and that such use could establish an undesirable precedent for other situations of environmental contamination from nuclear explosives."* [81]

Radiation protection standards were not used for the cleanup of the Bikini Atoll initiated in 1969. It was clear that the Bikini cleanup was not to interfere with military prerogatives. According to the Memorandum of Understanding between the AEC and DOD entered into on February 11, 1969:

"The Bikini cleanup will not interfere significantly with the maintenance of the test readiness posture."

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[79] Alvarez 1991.

[80] U.S. Atomic Energy Commission, Outline of Staff Paper on Enewetak Cleanup, April 16, 1974.

[81] Ibid.

When the people of Bikini were returned in 1972, it was understood that consumption of locally grown food would likely increase radiation doses, but it was believed that advice on food restrictions and use of imported foods would make Bikini habitable. Unfortunately these assumptions proved wrong. By 1978 the U.S. Department of Interior was forced to reevacuate the atoll, after exposure data collected by the DOE showed that residents were absorbing doses were exceeding annual limits for the U.S. public from the consumption of contaminated food. By June of 1982, Dr. Henry Kohn, the scientist hired to oversee the Bikini cleanup indicated that the 250 millirem limit first set for Enewetak be applied to Bikini.

When the RMI health and environmental program was transferred to the DOE nuclear weapons program in 1982, DOE subsequently bypassed and otherwise excluded the Department of Interior and the High Commissioner by dealing directly with the RMI government. Prior to this time, DOE served in an advisory capacity to Interior and the High Commissioner, and communicated through them. This change occurred during a critical period of negotiations over the Compact.[82]

Instead, Mr. Ray substituted a standard-based radiation protection policy with a policy based on *"risk acceptance."* The concept behind this change was that the people of the Marshall Islands should only be told what their risk is, and on that basis they would make their own decisions.

Since the 1954 "Bravo" fallout tragedy, major portions of the northern Marshall Islands, particularly the northern islands of the Rongelap Atoll sustained persistently high levels of radioactivity. For several years, the DOE's Brookhaven National Laboratory (BNL) was performing *in-vivo* of radiation on Bikini and Rongelap using "whole body counters." Beginning in the early 1960's, the AEC and subsequently the DOE advised Trust Territory officials on the importance of restrictions on eating food collected from the northern Rongelap islands in order to limit radiation exposures. For almost 25 years the restrictions on food from the northern Rongelap islands was honored and exposures to the people steadily declined.

While the Rongelap people have had the benefit of receiving imported foods from the U.S. as part of the U.S. Trust responsibility, some individuals would occasionally go to the northern Islands for local food. Coconut crabs, in particular, have been a favorite food collected in the north. This was easily detected by the use of whole-body counting done by BNL.

By July 1982, BNL was detecting sharp increases in internal radiation levels among Rongelap people, deviating from the historical trend. It was assumed by BNL researchers that greater quantities of local food from the northern islands were being consumed.

On November 8, 1982, BNL reported to Roger Ray, who had assumed control over their research that the average adult Rongelap male body burden of radioactivity for Cesium-137 increased by 56 percent. Adult female dose levels went up by eleven percent and children doses increased by 82 percent.[83]

These increases in internal exposures represented a reversal of the trend in doses measured by BNL beginning in 1965. Moreover, this phenomena had already been discovered in the Bikini people after they were resettled in 1972 and then reevacuated. Dr. Edward Lessard, then head of the Marshall Islands radiation dose studies, reported to Ray, *"this recent increase may have resulted from the relaxing of restrictions to the northern islands of Rongelap Atoll as a source of coconut crabs."*

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[82] Alvarez 191.

[83] Alvarez 1991.

Also in November 1982, DOE published its results from the 1978 radiation survey – known as the 1982 Bilingual Radiation Report. Mr. Ray subsequently arranged through the RMI government for public presentations of the report at various atolls.

On December 9, 1982, A DOE team consisting of Roger Ray, Dr. William Bair of Battelle's Pacific Northwest National Laboratory, and William Robison of Lawrence Livermore National Laboratory presented the bilingual report to elected leaders of the RMI. Contrary to usual policy, there were no representatives of the High Commissioner of the Trust Territory, Department of Interior, BNL or other medical staff in attendance.[84]

According to the transcript of the meeting a great deal of discussion focused on the risks of eating contaminated foods in the northern islands. During the presentation Mr. Ray indicated that consumption of food from the contaminated northern islands was optional and dependant on the circumstance. When asked by Senator Ataji Balos about the degree of safety associated with eating contaminated food from the northern islands, Mr, Ray responded:

There is I think not a yes or no answer to the question of the portion of the diet that comes from the northern islands as that portion increases the radiation dose to the person increases. If al of the diet comes from the northern islands that still is not a great catastrophe but things can be better if none of it comes from the northern islands... There is a choice that the individual must make or the community must make….The amount of radiation that all of us received just coming here for this visit is not very different from the increase in radiation that your Rongelap person would have had by your daily increase in diet from the northern islands over six weeks. Our one trip here might equate to six weeks of this increased diet from Rongelap. (P 64 of the transcript)

According to a report of the meeting a DOE official who accompanied Ray, stated:

"Roger Ray's statements were not compatible with past policy. Advice was given directly to the Marshallese... that changed and in the perception of some, voided past restrictions." [85]

Rongelap People Flee their Homeland

Unlike the people of Bikini and Enwetak who were removed from the homes prior to testing, all of the Rongelap people are an "exposed" population, not just those living on Rongelap in 1954. DOE has persisted in the application of its "maximum permissible levels" dose standards to a population with both an acute exposure (1954) and a chronic exposure (1957- 1985).

A crisis point for the Rongelap people was reached in November 1982, when DOE reached, when the U.S. Department of Energy (the successor agency to the AEC), when DOE released a bilingual report on radiation contamination derived from a radiological survey of the 13 islands and atolls in the Northern Marshalls. In particular, a map in the report comparing the radiological conditions of the atolls caused major concern. It indicated that the Rongelap Atoll appears to be just as contaminated with radioactivity as the areas in the Marshall Islands where nuclear weapons were detonated and where no people were permitted to live.

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[84] Alvarez 1991.

[85] Alvarez 1991.

In a briefing on the bilingual report for leaders of the fallout impacted atolls in December 1982, Roger Ray, a DOE official stated that the Marshallese should make their own decisions on radiation exposures and cancer risk they would accept, and declined to provide advice or recommendations on radiation protection, or to say whether or not Rongelap was a safe place to live.

According to a DOE official with long-standing involvement in the Marshal Islands, *"The evacuation of Rongelap Atoll appears to be a totally senseless action unless the role of the Department of Energy in this decision is understood. DOE's involvement could subject this agency to severe criticism both nationally and internationally."*

In an internal Memo dated July 22, 1985, Thomas McCraw, a DOE radiation protection official, reported that:

The Rongelap people were told that they should make their own judgments on radiation protection. They were also told that they could eat food that had been restricted for many years Whole body exposures on Rongelap atoll measured by Brookhaven National Laboratory (BNL) increased significantly during 1982 and were still elevated in 1983. The relaxing of a restriction on U31 certain food from more contaminated islands at Rongelap appears to be a contributing factor. In the past, this restriction was stated clearly as a prohibition... Questions about past radiation exposures on Rongelap have remained unanswered for more than 2 years.

I have argued that exposures not found acceptable for the U.S. population are also not acceptable in the Marshalls and that radiological criteria should be the same from atoll to atoll. This, of course, is not compatible with the idea that the population of each atoll should make its own judgment. Short of acting against Federal policies, or having the Department of Interior (DOI) mount a successful effort to get an exemption from these policies, the DOE appears to have no valid alternative but to continue to apply current radiation standards in the Marshalls.

The new advice that was obviously intended to give freedom of choice has backfired. The Rongelap people followed-the advice they were given, made the judgment not to accept the risk, and left their atoll.[86]

By August 1983, the Congress of the Republic of the Marshall Islands, known as the Nitijela, unanimously passed a resolution asking the United States to relocate the Rongelap people. In the following two years, representatives of Rongelap testified before the U.S. Congress asking to be relocated. Where they had not been wiling to assert before, DOE now claimed that Rongelap was safe, but avoided discussing the bilingual report or the radiological map. By May 1985, a vessel operated by Greenpeace, an international environmental organization transported some 300 people from Rongelap to an island in the Kwajalain Atoll.

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[86] U.S. Department of Energy, Memorandum to: Edward J.. Vallario, From: Thomas McCraw, July 22, 1985. http://worf.eh.doe.gov/data/ihp1d/400171e.pdf

In response to their plight, the U.S. Congress added a provision to the Compact of Free Association, which called for an independent assessment of the radiological conditions on Rongelap. The assessment was completed in 1988. It found that the northern part of the atoll should be considered "forbidden territory." Only a year later, when questioned by Members of the U.S. Congress, was it revealed by Dr. Henry Kohn, the study's author that it was safe to return only if they could rely on imported food for the next 30 to 50 years. Kohn was following the lead provided by the DOE at the time, which had in the early 1980's ended its prior policies relative to radiation protection in the Marshall Islands.

The 1992 Agreement

In February 1992, the U.S. Departments of Energy and Interior entered into an agreement with the Republic of the Marshall Islands and the Rongelap Local Atoll Government that addressed the terms and conditions for resettlement of the Rongelap Atoll. In particular, the agreement overturned the policy of the U.S. during the 1980's of discarding radiation protection standards and established limits for exposure. Specifically, the agreement states:

"The primary condition of a determination to initiate resettlement…is that the calculated maximum whole-body radiation dosed equivalent to the maximally exposed resident shall not exceed 100 millirem (mrem) year above natural background, based on a local food only diet."

The U.S. National Academy of Sciences subsequently reviewed this agreement and found it to be viable.[87] The Panel recommended, among other things:

- *"Because of the substantial uncertainties in this complex and unprecedented situation, the committee recommends that no categorical assurances be given concerning the MOU requirement that no individual receive a calculated annual radiation dose equivalent of more than 100 mrem above background. Some people returning to Rongelap and subsisting on a local-food-only diet might receive an annual dose in excess of 100 mrem above background if there is no remedial action."*

In 2006, a radiological expert for the people of the Rongelap Atoll reported that the 100 millirem limit would be exceeded based on a local food only diet, if potassium fertilizer were not repeatedly applied. [88]Apparently, this was not done for the southern islands of the atoll where local food is obtained.

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[87] Committee on Radiological Safety in the Marshall Islands, Board on Radiation Effects Research, Commission on Life Sciences, National Research Council, Radiological Assessments for the Resettlement of Rongelap in the Republic of the Marshall Islands, National Academy Press, Washington, D.C. 1994.

Despite this warning, the Department's of Energy and Interior did not take steps to ensure this would be done, in accordance with the 1992 agreement.

Give the long and unfortunate legacy of nuclear testing it appears that this critical element of safety was lost in the shuffle.

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[88] B. Franke, Institute for Energy and Environmental Research, Radiation Doses That People May Receive If They Return To Rongelap Island In 2006, March 4,2006.

Mr. FALEOMAVAEGA. I want to thank you gentlemen for your most eloquent statements. Certainly this is an issue that I sincerely hope this subcommittee will continue to pursue while working closely with the appropriate Federal agencies and our colleagues here in the Congress.

I just want to get a sense from each one of you. There seems to be a consensus that we are reaching here. As I have said earlier, the people of the Marshall Islands have been jerked around for the past 64 years by our Government, in not giving them proper compensation for the loss of their islands, the loss of their lives, severe exposure to nuclear fallout and all that was done. I am saddened by this, but we are going to pursue this.

I am very glad that my good friend from Arizona is also here with us.

Dr. Palafox, I want to commend you and thank you for taking the time, at your own expense, to come all the way from Hawaii to join us in this hearing. It is so important. You have played a very critical role in trying to give medical attention to the people of the Marshall Islands in range of our nuclear testing program conducted during that 12-year period.

I want to note with interest that you seem to agree that the whole basis of our treatment of the Marshallese people in the beginning was never really to treat them, but to monitor and to survey and to find out what were the effects of nuclear fallout, especially on those who were exposed as a result of our nuclear testing program.

In other words, it seems that we really were not focused on giving proper medical treatment to these people; instead, they were guinea pigs, specimens. That is all we cared about. We didn't care about whether or not this child or this mother or this woman was severely exposed or giving birth to a deformed baby as a result of this.

Please, your response.

Dr. PALAFOX. In your opening statement, Honorable Eni, you mentioned that one of the doctors regarded Marshallese close to mice, not quite mice, but close to mice. So I think when I think back on the whole history, it is very clear that even the basic premise that you can test atomic weapons in someone else's home is extremely arrogant. But I think it carried into the science at that time.

So when the doctors were caring for people, their primary concern wasn't the people. It wasn't patient-centered. It was what was the interest in the time. I don't think as individuals that these doctors were trying to be mean or negative to the patients. But I think what consumed them was the thinking process, the arrogance, what was important, and it wasn't patient care.

What really worries me today is that shouldn't carry on today, and it is carrying on right now. And that to me is the bigger problem. That should have been transcended a long time ago, and it is continuing to this day.

Mr. FALEOMAVAEGA. Mr. Weisgall, I went through your statement with tremendous interest. I am always happy to have you testify and to give us insight based on your personal experience.

How much money did we give to those exposed in Hanover in Washington? As I recall——

Mr. WEISGALL. That is an extraordinary example to use. We have not put a shovel in the ground yet at Hanford to clean it up. Total funding is on the order of magnitude now of $49 billion. These claims—the $2.2 billion, obviously, that is a significant amount of money. We do spend a lot of money as a country to clean up, and that is one site.

We have got Hanford, Rocky Flats, we have Savannah. There are a lot of other places. But we do spend a lot of money to deal with the legacy of that program, because we recognize that it is something that is a responsibility of our country.

Mr. FALEOMAVAEGA. As I recall, it would take us over $100 billion to clean up the nuclear waste that we are currently producing here in the United States. I don't know if I am correct on that.

Mr. Alvarez?

Mr. ALVAREZ. Well, according to the most recent baseline budget estimate of the Energy Department to clean up Department of Energy nuclear weapons sites, this will cost approximately $300 billion and will take perhaps 50 to 70 years to accomplish. In addition to that, approximately $5 billion has been paid out as an entitlement to workers and their survivors who were involved in producing nuclear weapons, and approximately $1.5, perhaps $2 billion, has been paid out to residents living near the Nevada test site and to uranium miners who toiled in the mines in Arizona, Utah, and the Western States.

Mr. FALEOMAVAEGA. We are very happy to have with us a little delegation of some of our distinguished students, who currently attend Brigham Young University in Hawaii. I hope they are learning something about congressional hearings. The chair would like to personally welcome them here to observe what it is like here.

I say this with tremendous pride, because I am an alumnus of Brigham Young University, Hawaii campus. I am very happy to have our young people come and observe the workings of Congress. I don't know if it will be to their benefit or detriment. I would like to yield to the gentleman from Arizona for his questions.

Mr. FLAKE. I thank the chairman, and I apologize for having to go vote. I wasn't able to read the testimony either before. So if this has been answered or talked about, forgive me.

I also wanted to welcome the students from BYU-Hawaii. I also spent a semester there, the best semester of my life, because that is where I met my wife. Anyway, many found memories of school there, and welcome here.

Mr. Weisgall, you mentioned—I have just been glancing through your testimony, let me try to get the chronology right here. There are some 4,000 inhabitants of the Bikini Atoll. Was that prior to the Bravo test or is that——

Mr. WEISGALL. No, 167 were moved back in 1946. The population today, those who actually receive, for example, USDA food or other benefits, it has now grown to a little bit under 4,000.

Mr. FLAKE. All right. And how many were moved back in the sixties only to be moved again?

Mr. WEISGALL. By the sixties, the population had grown quite a bit by then, and my best recollection is you were dealing with a couple of hundred folks who moved back. I want to say somewhere between 200 and 300. Not the entire population. In fact, there was a debate in the community about moving back. Some were still concerned about radiation. But a large number did. In fact, the mayor of Bikini, who is going to follow me, was there as a little boy, moved back as a little boy, and then as a 10-year-old was moved off in 1979.

Mr. FLAKE. For those moved back and then were relocated again, they were relocated because they were told they had ingested levels of radiation far in excess of what we thought were there. What, if any, ill effects have we detected from that period?

Mr. WEISGALL. From an epidemiological point of view, with a small number of people like that, it has been hard to see any major statistical differences. There have been cancers. There have been radiation-related ones. But nothing as dramatic as you see in the statistics from Rongelap, where you had exposure similar to Hiroshima or Nagasaki, or much greater than Chernobyl.

So with Bikini, while they had ingested the largest amount of radiation of any known population through the food chain, that also went through their systems pretty quickly once they were evacuated.

Mr. FLAKE. Ingested. Then it was in the soil, therefore in coconuts?

Mr. WEISGALL. Coconuts, pandanus, breadfruit. It all came up through the soil simply because the cesium acts a little bit like potassium; but the cesium, strontium, americium were absorbed in the food. This is something that, again, was discovered by scientists once the folks were back there. The scientists did not realize in advance what that level of absorption would be in the food products.

Mr. FLAKE. Here we are 60-some years later. Are there any—I know some are willing to move back now just because the relocation is finally happening. But what concerns are there now still on any of the islands in the Marshall Islands in terms of radiation still existing?

Mr. WEISGALL. To speak very quickly for Bikini, it still needs a radiological clean-up. You could scrape that soil. You could apply potassium-rich fertilizer and block the uptake of the cesium and some americium, strontium and plutonium. But there is not funding. Right now, there are no Bikinians living back on their atoll 64 years later.

In Enewetak, the northern islands are still too radioactive, and the radiation concerns at Rongelap and Utrok are similar.

Mr. FLAKE. There is some tourism, mostly ecotourism, happening near Bikini, is there not; and where are those individuals living or staying?

Mr. WEISGALL. There was a dive program that the Bikinians started because the first test in 46 sank a number of Navy ships, including the Saratoga. You can actually walk end to end on that flight deck. That started in 1996. It was terminated several years ago simply because the logistics of the airline couldn't support it.

To be up at Bikini for a couple of days or for 3 or 4 days is not an issue, especially when you are eating imported food. So it is not a medical or scientific concern because, number one, it is a short duration, and number two, very little if any local food is consumed—was consumed.

Mr. FLAKE. But if somebody were to relocate there without soil scraping or anything else, there are still levels of radiation?

Mr. WEISGALL. You would expect pretty much a repeat of the experience from 1968 to 1979, with the half-life of the cesium being obviously somewhat reduced. But even the folks, the very good scientists at Lawrence Livermore who have been helpful in coming up with these remediation measures, came up with them because not having the remediation measures is a problem. In other words, the lack of the remediation measures leaves you the radiation levels in excess of acceptable standards.

Mr. FLAKE. So there are no full-time residents of Bikini Atoll at all right now?

Mr. WEISGALL. Correct.

Mr. FLAKE. Mr. Alvarez?

Mr. ALVAREZ. Yes. In 2005, the National Cancer Institute reported to the U.S. Senate Committee on Energy and Natural Resources, that among the 14,000 inhabitants who live in the Marshall Islands, an estimated 500 cancers would result from radioactive fallout. The risk of contracting cancer for those exposed to fallout was greater than 1 in 3.

So, it is not simply just the people who were the most heavily exposed. It is the entire archipelago that we need to be concerned about.

Mr. FLAKE. So not just the ones who were downwind of Rongelap or elsewhere?

Mr. ALVAREZ. I guess it is important to understand there were 66 nuclear shots there, and in many cases the radiation monitoring, given the time and circumstances, left much to be desired. So it is very similar to the United States when we exploded bombs in the Nevada test site. We weren't monitoring a lot of stuff. We released a lot of radiation, and there is still a lot of unknowns. But there was a lot of radiation released and a lot of people have been exposed.

Mr. FLAKE. Any other comments on that?

Mr. ALVAREZ. No.

Mr. FLAKE. Thank you, Mr. Chairman.

Mr. FALEOMAVAEGA. Dr. Palafox, you mentioned the word "arrogance" about why we shifted our whole testing program. I don't know if it was really arrogance to say, "Rather than testing in America, in the continental US, let's take our atomic bombs to the Marshall Islands. It is more feasible. A few people, little islands, who cares?"

I am reminded of what former Secretary of State Kissinger said when he was talking about negotiations with the Micronesians. Do you know what he said? "There are only 90,000 of them. Who gives a damn?" That was the attitude. That was the attitude that our administrators, those national policymakers, had toward these people.

I was saddened by that fact as I traveled to visit Mururoa Island where the French conducted their nuclear testing program. Certainly nobody in France would like to have nuclear bombs dropped all over the place in France, so they decided to come to the Pacific and conduct their nuclear tests.

As for the Soviet Union, nobody wanted to explode bombs in Russia; they decided to go to Kazakhstan, then a province, and detonated 450 nuclear devices.

By the way, when we exploded the Bravo shot in 1954, it was 1,300 times more powerful than the bomb we dropped in Hiroshima and Nagasaki. The hydrogen bomb that the Russians built was 50 megatons, 3,000 times more powerful than the bombs we dropped in Hiroshima, which still to this day is classified and not much is known about it.

I don't know. In our national interest we decided to do this, and I think that all we are trying to do here is give better treatment to the Marshallese people for the sacrifices they have had to endure for that 60-year period. They are still waiting for justice and fairness and we should give them what they are due.

I sincerely hope that my colleagues, Mr. Flake, Congressman Ackerman and others, will be supportive of this effort. I am not going to wait. This is just the beginning. We are building a record, hopefully, and in such a way that we can develop legislation that is going to address some of these serious issues affecting the good people of the Marshall Islands.

Mr. Miller, thank you for your visit. As you notice, I am wearing a mai kai. It was from my dear friend, a member of the Oneida Nation of New York. I am an adopted member of the Bear Clan. Hopefully I will have the mana and the power of the bear, not to kill anybody, but just to hopefully be helpful in such a way that we will produce better results in helping the people of the Marshall Islands.

Mr. Weisgall?

Mr. WEISGALL. Two very quick points. Number one, going back to your quotation at your opening statement about the mice, that was a transcript of a meeting. I think it is very interesting to see a sanitized view of this issue.

The annual report, the 1957 annual report from Dr. Canard who headed up the AEC team—the Brookhaven team—listen to this language. This concerns putting people back on Rongelap and Utrok:

> "The habitation of these people on the island will afford the opportunity for most valuable ecological data on human beings. The various radio isotopes present on the island can be traced from the soil through the food chain and into the human beings."

It is a very kind of sanitized, very scientific view of well, we can learn a lot by doing this, as opposed to what one would say privately at a meeting. It is an extraordinary statement in an annual report from Brookhaven.

My second point for Mr. Flake, you know, this is a bipartisan issue. It is a bipartisan concern, as you have pointed out, and Mr. Rohrabacher. It is interesting to me there is now a bill pending both in the House, H.R. 5119, and in the Senate, S. 3224, to expand even more the Radiation Exposure Compensation Act. That is H.R. 5119 and S. 3224.

I am also pleased that the sponsors over on the Senate side include a range of Senators, that include for instance, Mr. Risch from

Idaho, a number of Republicans that are as concerned as Democrats about this issue, obviously for their constituents down-winders and the like in the continental United States. But as we have heard today, the same issues should apply to the Marshalls.

Mr. ALVAREZ. On page 1 of my testimony, I have the verbatim quote taken from the transcript of the meeting of the Advisory Committee for Biology and Medicine in 1956, discussing whether or not the people of Rongelap should return. What it says is the following. It says,

> "The northern atolls is by far the most contaminated place in the world. It would be very interesting to go back and get good environmental data."

On and on he goes.

> "Now, this type of data has never been available. While it is true these people do not live, I would say, the way Westerners do, civilized people that is, nevertheless they are more like us than the mice."

Mr. FALEOMAVAEGA. Gentlemen, thank you for your time and for your most eloquent statements.

Dr. Palafox, again, thank you for traveling such a long distance to come and provide this most valuable testimony to the committee.

Hopefully, we will continue to be in touch with all of you. Thank you very, very much.

[Whereupon, at 4:50 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

SUBCOMMITTEE HEARING NOTICE
COMMITTEE ON FOREIGN AFFAIRS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515-0128

SUBCOMMITTEE ON ASIA, THE PACIFIC AND THE GLOBAL ENVIRONMENT

Eni F.H. Faleomavaega (D-AS), Chairman

May 18, 2010

TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend an OPEN hearing, followed by a briefing of the Subcommittee on Asia, the Pacific and the Global Environment, to be held in **Room 2172 of the Rayburn House Office Building (and available live, via the WEBCAST link on the Committee website at http://www.hcfa.house.gov)**:

DATE:	Thursday, May 20, 2010
TIME:	2:00 p.m.
SUBJECT:	Oversight on the Compact of Free Association with the Republic of the Marshall Islands (RMI): Medical Treatment of the Marshallese People, U.S. Nuclear Tests, Nuclear Claims Tribunal, Forced Resettlement, Use of Kwajalein Atoll for Missile Programs and Land Use Development
WITNESSES:	**Panel I** Ms. Frankie A. Reed Deputy Assistant Secretary Bureau of East Asian and Pacific Affairs U.S. Department of State Mr. Nikolao Pula Director Office of Insular Affairs U.S. Department of the Interior Steven Messervy, Ph.D. Deputy to the Commanding General for Research, Development, and Acquisition U.S. Army Space and Missile Defense Command U.S. Department of Defense Mr. Glenn S. Podonsky Chief Health, Safety and Security Officer Office of Health, Safety and Security U.S. Department of Energy

Panel II
Neal A. Palafox, M.D., M.P.H.
Professor and Chair, Department of Family Medicine and Community Health
John A. Burns School of Medicine
University of Hawaii

Mr. Jonathan M. Weisgall
Legal Counsel for the People of the Bikini Atoll

Mr. Don Miller, Esq.
Independent Attorney-at-Law

Mr. Robert Alvarez
Senior Scholar
Institute for Policy Studies

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.

COMMITTEE ON FOREIGN AFFAIRS

HEARING MINUTES OF SUBCOMMITTEE ON ASIA, THE PACIFIC AND THE GLOBAL ENVIRONMENT

Day: Thursday

Date: May 20, 2010

Room: 2172 Rayburn House Office Bldg.

Start Time: 2:10 p.m.

End Time: 4:52 p.m.

Recesses:

Presiding Member(s): Chairman Eni F.H. Faleomavaega

CHECK ALL OF THE FOLLOWING THAT APPLY:

Open Session	X
Executive (closed) Session	
Televised	X
Electronically Recorded (taped)	X
Stenographic Record	X

TITLE OF HEARING: "Oversight on the Compact of Free Association with the Republic of the Marshall Islands (RMI) Medical Treatment of the Marshallese People, U.S. Nuclear Tests, Nuclear Claims Tribunal, Forced Resettlement, Use of Kwajalein Atoll for Missile Programs and Land Use Development"

COMMITTEE MEMBERS PRESENT: Ranking Member Manzullo, Rep. Ackerman, Rep. Flake, Rep. Rohrabacher, Rep. Inglis

NONCOMMITTEE MEMBERS PRESENT:

WITNESSES: Same as meeting notice attached? Yes X No ____ *(If "no", please list below and include title, agency, department, or organization.*

ACCOMPANYING WITNESSES: *(Include title, agency, department, or organization, and which witness the person accompanied*

STATEMENTS FOR THE RECORD: *(List any statements submitted for the record)*
Chairman Faleomavaega, Ranking Member Manzullo, Rep. Ackerman, Rep. Watson, Ms. Reed (witness), Mr. Pula (witness), Dr. Messervy (witness), Mr. Podonsky (witness), Dr. Palafox (witness), Mr. Weisgall (witness), Mr. Miller (witness), Mr. Alvarez (witness)

Lisa Williams
Staff Director

Statement
Congresswoman Diane E. Watson
Subcommittee on Asia, the Pacific and the Global Environment
Committee on Foreign Affairs
Thursday, May 20, 2010
2:00 p.m.

"Oversight on the Compact of Free Association with the Republic of the Marshall Islands (RMI)"

Good afternoon, Mr. Chairman, and our distinguished panelists. Thank you for holding this important hearing on the Republic of the Marshall Islands and our Compact.

Beginning in 1946, the United States conducted 67 atmospheric and thermonuclear tests on the Marshall Island Atolls. The unpredictable winds carried radioactive fallout to neighboring atolls and contaminated other islands. Because of this contamination, the people of Bikini and Enewetak atolls were forced from their homes and their health was compromised.

The residents of some atolls have returned to their homes. Yet the residents of Bikini and Rongelap have not. U.S. scientists claim that they may safely do so. Other experts, and the residents themselves, believe that further clean up is needed. It is understandable the residents do not feel that their home is safe enough to return to. Radioactive materials are known to cause cancers. The Nuclear Claims Tribunal, that was established to ensure that the peoples of the Marshall Islands were fairly compensated, has decided in favor of the residents and deemed additional clean up a necessity, and Congress must listen. It is imperative that we decide what is fair science and what is fair compensation.

Thank you, Mr. Chairman, and I yield back the remainder of my time.

Testimony of the Honorable John M. Silk, Minister of Foreign Affairs, Government of the Republic of the Marshall Islands. Presented to the Subcommittee on Asia, the Pacific, and the Global Environment of the House Committee on Foreign Affairs

May 20, 2010

Chairman Faleomavaega, Members of the Subcommittee, Ladies and Gentlemen:

On behalf of His Excellency President Jurelang Zedkaia, I want to thank you for hosting this important briefing regarding issues that are important to the Republic of the Marshall Islands

The Republic of the Marshall Islands and the United States have a long standing relationship that has spanned over 7 decades. Our relationship has taken us from the end of WWII when American soldiers liberated the Marshall Islands and stopped the violent atrocities and human rights violations being committed on Marshallese; to today, where citizens of the Marshall Islands are fighting alongside American soldiers in the war on terror.

Our relationship took a significant step over 40 years ago, when the United States assumed the role of Territorial Administrators for the Trust Territory of the Marshall Islands. Simultaneously, it was during this time that the U.S. determined that the location of the Marshall Islands would provide a significant advantage for security in the region. This led to the atomic and thermonuclear weapons era in our two countries' respective histories. As a result, many Marshallese still feel the ill-effects of this era to date, yet we still believe that our role was essential to the preservation of democracy and the ideals we strive for today.

In 1986, the Trust Territory relationship came to an end and a new undertaking took shape in the form of a Compact of Free Association. Today, this strategic partnership continues to evolve to where our two countries work in equal partnership on many issues in the domestic, regional and international arena:

This mutual partnership has provided a myriad of opportunities for both the RMI and the US. Since the late 1940's, the US military has continuously leased Kwajalein Atoll for its strategic missile defense program. And at the same time, citizens of the Marshall Islands are able to live, work and pursue educational advancement in the US.

Although our relationship has come a long way, there are a few outstanding issues that still need resolution for our relationship to develop further. I want to raise and put forth for the record on ways to make our relationship more beneficial for our two countries.

Status of the Bi-lateral relationship between the Republic of the Marshall Islands and the United States of America

The RMI and the US entered into a bilateral relationship in 1986 that can only be characterized as special and unique, in the form of a Compact of Free Association. No other country in the world, except for the Federated States of Micronesia and the Republic of Palau, has the same arrangement with the United States.

In the twenty four (24) years since, the RMI and US have confronted many regional and international issues together. Our mutual cooperation has lead to a more secured Northern Pacific region, and our common principles for democracy and freedom assures the US an ally in the global war on terrorism.

Our voting record at the United Nations speaks volume to our commitment to this relationship. We always stand behind the United States in casting very tough votes, even if it is not the most popular thing to do. In the end, we are contributing to the greater good and security of the world.

My Government is very pleased to note that the US Government is embarking on being a major player in Climate Change. We are one of the earliest supporters of the Copenhagen Accord, and welcome President Obama's personal commitment in brokering a deal at Copenhagen. But more is needed – global energy markets and the entire international community – especially the most vulnerable, such as small island states - are waiting for the US White House and Senate to signal a strong commitment on domestic action to reduce emissions. We are mobilizing to meet the challenge of the $30 billion of "fast start" finance under the Accord – we urgently need concrete results from "fast start" finance. Paperwork and red tape will not save us from rising seas, and will do little to build political trust. We urge that Congress appropriate full funding for "fast start" international efforts on climate change starting this year, and, in domestic legislation, to boost international finance for both adaptation and energy.

To us, climate change stands to threaten our sovereignty – we are only 2 meters above sea level and we have no high mountains – only our thin atolls. Unless there is strong and immediate action by all major emitters – RMI and other low-lying nations could succumb to sea level rise in 50 years, this threat – combined with even more urgent threats to our water supply - would inevitably force out-migration. A once proud people with ancestral ties to their small islands would become the first climate refugees. What will become of our people, and how will our rights be safeguarded? While this is an international issue, we can no longer ignore it's bilateral dimensions.

We would like to discuss issues related to the implementation of the Compact of Free Association, as Amended. As with anything that has many moving parts, there needs to be constant review of its performance to ensure that program delivery is optimized in the most efficient and effective manner. There is such a mechanism that was built into the Compact of Free Association, as Amended. This being the mandated 5-Year Review.

During our negotiations, both the RMI and the US agreed to mutually review the performance rendered in the Compact, with respect to the sector grant allocations, the Trust Fund, and others. To date, the RMI has identified key areas that need to be addressed to fully optimize the potential of the assistance provided under the Compact, as Amended.

Compact of Free Association, as Amended 5-Year Review

Pursuant to Section 104(h)(2) of Public Law (108-88), the Compact of Free Association, as Amended, provides for the U.S. Government to "review the terms of the respective Compacts and consider the overall nature and development of the U.S.-FSM and U.S.-RMI relationships." The section further states that the RMI will have a chance to review and comment on the review with further follow-up by the U.S. President including "any recommendations for actions to respond to such findings." Furthermore, this includes Section (E) of paragraph (1) which allows for "recommendations on ways to increase the effectiveness of United States Assistance and to meet overall economic performance objective, including, if appropriate, recommendations to Congress to adjust the inflation rate or to adjust the contributions to the Trust Funds based on non-U.S. contributions."

This clearly outlines the terms of reference for the 5-Year Review. In keeping with the letter of the law, and working within the parameters set forth within, the RMI has identified areas that need to be improved in order to meet what this review was intended for.

Full Inflation Adjustment

Partial inflation of the Gross Domestic Product (GDP) Implicit Price Deflator at the rate of 2/3rd of that of the US GDP has had a negative impact for the RMI. This, coupled with the annual decrement of $500,000 from the financial assistance from the US, is taking a toll on the RMI's fiscal stability. The declining real and nominal values of the grant assistance is hindering our ability to fully maximize the potential economic growth for the Marshall Islands.

For example, from fiscal year 2005 to 2007, the first year both the decrement and the partial inflation were applied to the base grant, today, the RMI has lost approximately US $1 Million in real value. This places significant pressure on the RMI to provide mandated services without cutting essential elements in providing these services. If this situation does not improve, many of the essential services currently being provided by the Government will have to decrease or ultimately be cut.

Global economic conditions further exacerbate the effects of the partial inflation and the decrement to our fiscal situation. One example is the cost of petroleum. This single commodity has managed to ravage our energy sector, increase the cost of delivering vital services to our people, and has increased the operation cost of the Government, as a whole. Paying for fuel to ensure that lights are kept on and that ships are running on schedule has become more of a burden to our financial situation.

Full inflation is needed to assist the RMI in off-setting some of the impact caused by the decrement. Full inflation will limit the effect of the decrement on our financial situation in the short-term, and will give the us ample time to transition to a fiscally stable state. We anticipate that when the decrement finally catches up to us, the shift will not be too extreme. Not doing so will force the RMI to make radical decisions that could potentially hinder our economic growth.

The RMI requests the committee's endorsement on this very critical issue. Our economic prosperity most likely depends on this.

Trust Fund Sufficiency and Amendments to the Trust Fund Agreement

The Compact, as amended provides a provision for the establishment of the Trust Fund. The main purpose of this trust fund is to duplicate the revenue source currently provided under Section 211 of this agreement, post 2023.

The last GAO report on the RMI trust fund calls into question the adequacy of the fund. The GAO's findings have been further supported by a recent Report of the Trust Fund's Investment Adviser. The RMI agrees with GAO's assessment and our Investment Adviser's Report, and urges the U.S. to work with the RMI to find a solution that will guarantee the sustainability of the trust fund. Our immediate concern is to facilitate a reasonable approach to maximize the potential and viability of the trust fund. Here are some possible solutions to this dilemma.

Extension of Grant Assistance

The initial delay in the establishment and investment of the trust fund puts the RMI at a disadvantage from the beginning. The trust fund agreement requires an investment for a period of twenty (20) years, but because of the delay, the trust fund would have been earning income for only seventeen years. There were legal and administrative hurdles to overcome before the fund was invested.

To remedy this delay, the RMI would seek an additional two to three years of annual grant assistance to meet the conditions set forth in the agreement of a twenty year investment and build up timeframe. Discussion on a base amount would have to happen to determine the appropriate level of grant assistance for the two to three year extension. This amount would become, in effect, the benchmark for the annual proceeds from the trust fund. In addition, this measure would conform with the original intent of the Trust Fund Agreement by both the US and RMI Governments.

Additional Contributors

The Republic of China (Taiwan) is the only subsequent contributor to the RMI-US trust fund. Taiwan will provide $50 million to the trust fund over the life of the build-up time period, making payments on a scheduled plan prescribed by our bi-lateral arrangement with the Taiwanese government. This is a major step as we try to give all the possible opportunities for the trust fund to become viable post 2023. The RMI is actively seeking other subsequent contributors to the trust fund, and I urge the U.S. to do the same. This is not just a good and prudent idea. The Trust Fund Agreement itself requires it. Both Governments have a fiduciary responsibility to seek other subsequent contributors to the Trust Fund.

Full Inflation adjustment for Trust Fund Contributions

Under the current trust fund agreement, contributions to the fund are not adjusted for full inflation. The funds lose their real value each year it is not inflated to reflect the its true value. We believe a full inflation adjustment to the Trust Fund contributions will help stabilize this fund, and provide adequate resources to the RMI post 2023.

Tax and Trade Compensatory Adjustment

The RMI is seeking remedy to the tax and trade report it submitted to the US Government in September 2009. The report stipulated that the RMI had indeed lost potential revenue as a result of the enactment of the original Compact. Pursuant to Section 111(d) of Public Law 99-239, the RMI could petition the US Congress to allow for compensatory adjustments if the RMI could show adverse impact from U.S. Congressional changes to the tax and trade provisions in the original Compact.

The report clearly shows that the RMI lost out on approximately $244 million as a result of these changes. The Compact has authorized up to $60 Million to compensate the RMI and the FSM for these changes, and is awaiting the US Government to review our report and make its determination. Should the funds be made available, the RMI plans to use these funds to invest in the RMI-US trust fund to ensure that the trust fund will be viable in the future, post 2023.

Supplemental Education Grant (SEG)

The idea behind having the Supplemental Education Grant (SEG) was to enable the RMI considerable freedom in designing and implementing its own educational programs to best fit our needs. This led to the RMI "cashing-out" of these federal programs to establish a similar system without the strict criteria in which many of these Federal Programs adhered to. The Compact, as Amended authorizes $6.1 million annually to fund these supplemental educational programs.

Our national Kindergarten Program and the displaced youth populations are two of the primary beneficiaries from this arrangement. This grant allows the RMI formulate a universal pre-school program, and instill in them the foundation for achieving educational excellence. The training provided for displaced youth will allow them to compete effectively in the workforce.

Though progress has been made with respect to the implementation of the SEG, there are still barriers to which we still need to overcome to fully appreciate the intent and purpose of the SEG. Most notably is the delayed transfer of the SEG funds to the RMI.

The annual appropriation of the SEG in Congress usually takes place well into the school year, which forces the RMI to delay or even canceling programs because of this delay. Core activities that are currently budgeted under the SEG are forced to utilize funding appropriated to other core programs so they can start at the beginning of each school year. The language in the Compact specifically states that the SEG will be made available to the RMI at the beginning of each fiscal year, yet this is not the case.

If and when Congress finally approves the SEG for that fiscal year, there is considerable delays in the transfer of funds within the U.S. Agencies that administer the grant, and making it available to the RMI. By U.S. law, these funds are to be made available to the RMI within 60 days after the date of appropriation, which again, is not the case.

To compound these problems, the SEG is not adjusted for the 2/3rd inflation provided in the Compact. The RMI has seen the reduction in the SEG since the second year it was made available to the RMI, and fears that this trend will subsequently lead to the RMI not being appropriated the SEG in future years.

The RMI requests this committee and the Administration to make provision that the SEG be made available to the RMI as a permanent appropriation and adjusted for inflation. This is an issue that could be corrected in the Compact mandated 5-Year Review. Doing so would greatly improve our ability to provide educational services to all Marshallese.

Addressing Climate Change in the context of the Compact

RMI is one of the world's most vulnerable nations to climate change – our Compact should be a tool to achieving a low-carbon pathway and climate-resilient future. RMI has taken a leadership position among developing nations – seeking to cut our emissions by 40 percent – and we are also developing specific approaches to safeguard our population - the Compact should be better addressed as a possible pathway to get us there.

The Compact review should consider first how RMI and the US can better mainstream climate change into development activities, and how we can better "climateproof" existing activities, especially Compact-related infrastructure. In addition, we should consider how anticipated US "fast start" funding – currently before Congress - for adaptation and renewable energy can be addressed in the context of the Compact – which assures us priority in international funding, and poses clear advantages including mutual oversight. Finally, we should consider how the Compact addresses the more complex long-term risks posed by climate impacts.

Issues related to the US Nuclear Testing Legacy in the Marshall Islands, including Section 177 of the Compact of Free Association, and the Nuclear Claims Tribunal (NCT)

From 1946 to 1958, the U.S. conducted thermo-nuclear testing in the Marshall Islands, in which sixty-seven (67) atmospheric nuclear weapons were detonated on Bikini and

Enewetak Atolls. The most powerful of these weapons was the first ever Hydrogen bomb to be detonated in the world on March 1st, 1954. March 1st is now a national remembrance day in the RMI.

Commonly referred to as the Bravo Shot, it was the most powerful weapon the world had ever seen. The Bravo Shot is often benchmarked against another infamous atomic bomb for its awesome power; the bomb dropped over Hiroshima that ultimately ended World War II. It is quantified that the yield of the Bravo Shot was approximately 1,000 times more powerful.

The nuclear legacy has affected every aspect of life in the islands, including our people's health and our environment. The testing will forever be remembered in the perils of time as a period in which many of our people were forced to be displaced from their home islands, not being able to cultivate and benefit from their lands, and ushered in a time of unprecedented levels of new and various types of cancers emerging in the local population.

Our own human resources and capital capacity restricts us to fully deal with the circumstances caused during the testing era. Even with direct financial and technical assistance from the U.S. in the form of the 4-Atoll Health Care Program is insufficient. The RMI firmly contends that the extent of the damages done to the RMI and to its people as a result of the nuclear testing far exceeds the limitations of only 4-Atolls. The Marshall Islands further stipulates that the whole of the RMI was affected by the nuclear fallout. Our claim is further amplified by the recent report conducted by the National Cancer Institute (NCI), which commissioned a study to assess the RMI on cancer issues.

In 2004, the NCI reported that there will be an estimated five hundred thirty two (532) radiation related excess cancers in the Marshall Islands that resulted from the nuclear testing program, and that many of these cancers have not been realized. Five hundred thirty two more people being diagnosed with cancer is a significant portion of our population. This would equate to approximately 1 in 120 persons living in the RMI will be diagnosed with cancer in the future. These new cancers do not take into account a bevy of other factors, such as exposure to radiation in the environment (such as the consumption of food, water and others). As such, it is difficult to identify the number of people who will develop cancer as a result of the testing through its natural progression within a population.

There needs to be continued discussion with the intent of urgently addressing the situation with respect to the fulfillment and payment of awards made by the Nuclear Claims Tribunal. Over the past two (2) decades, much has already been said on this subject and our Government and the Tribunal have provided large amounts of scientific and legal background, and information supporting the Tribunal's processes and awards in its Changed Circumstances Petition (CCP), various Congressional public hearings; and numerous meetings between our governments.

The point remains that the establishment of the Tribunal, its jurisdiction and processes were something that both governments agreed to in the Compact of Free Association. The RMI and NCT have fulfilled these mutually agreed mandates, and it should come as no surprise to anyone some 24 years after that settlement that the Section 177 settlement was inadequate. The problem now is that Congress needs to take measures to address these remaining issues in a comprehensive manner that is consistent with the spirit and intent of implementing a final settlement of all claims arising from the nuclear testing program.

The Tribunal has ceased to function because the fund has been depleted. This will prevent the Tribunal from making personal injury awards for cancers in the future. As of today, over $23 Million remained unpaid on personal injury awards.

Property damage awards made by the Tribunal also need to be addressed. Of the $2.2 Billion in awards made by the NCT, only $3.9 Million have been paid out. Two of the atolls (Bikini and Enewetak) that received awards from the Tribunal have found it necessary to take their awards back to the U.S. courts to seek enforcement of the process that both Governments originally agreed to in the Section 177 Agreement. To date, the case was dismissed by the US Court of Appeals and the US Supreme Court declined to hear it. Now they are back to square one, per se, in trying to seek fair compensation for their property damage awards through the US Congress, as originally stipulated in the Compact of Free Association. We need to do better than this, and work together toward a final resolution of the terrible nuclear legacy that our people have suffered, and continue to suffer.

Health Issues related to Nuclear Testing

Health care remains an issue in the Marshall Islands, specifically with regard to illnesses stemming from the nuclear testing in the RMI. There are numerous reports that support this claim, and is one of the fundamental premises for the NCT's personal injury awards.

One in particular is the recently published President's Cancer Panel Annual Report entitled "Reducing Environmental Cancer Risk, What We Can Do Now" (PCP) published by the U.S. Department of Health and Human Services, National Institutes of Health and the National Cancer Institute comment in the Report's Executive Summary that:

"Of special concern, the U.S. has not met its obligation to provide for ongoing health needs of the people of the Republic of the Marshall Islands resulting from radiation exposures they received during U.S. nuclear weapons testing in the Pacific from 1946–1958."

The PCP goes on to state:

"Funding issues are exacerbated by the limited health resources available in the Marshall Islands and elsewhere in the Pacific Islands to treat affected individuals who seek care through the Section 177 and Special Medical Care programs."

The PCP notes that despite the ongoing increased risk of several hundred new cancers caused as a result of the Nuclear Testing Program in the Marshall Islands, actual funding to address these health risks has declined considerably since the mid 1980's notwithstanding the exponential increase in health care costs during the same period.

These illnesses being referred to by the PCP include thyroid cancer, leukemia, and a myriad of other cancers that have become prevalent in the RMI. The rate and proportion of individuals within the RMI's population being diagnosed with one or several types of cancers is staggering and suggest that these rates are not normal.

Changed Circumstances Petition

On September 11, 2000, the RMI submitted to the United States Congress a Changed Circumstances Petition (CCP) in an effort bring the US Government to terms with the fact that not just 4 Atolls were effected by the nuclear testing, but rather, the whole of the RMI was in fact contaminated from the testing. The RMI Government methodology and rationale in developing this report was based on new information that were considered classified during the time Section 177 of the Compact of Free Association was being negotiated.

To address some of the RMI's concerns, the US Senate introduced S.1756 in 2007 at the request of former President Kessai II. Note to start addressing these issues outlined in the CCP. After a hearing was held by the committee, and a mark-up was conducted on S.1756, the proposed legislation increased the number from four (4) to ten (10) atolls (Bikini, Enewetak, Rongelap, Utrik, Ailuk, Mejit, Likiep, Wotho, and Wotje) that would have participated in the health care program; and would have increased the annual funding level committed to this health care program from less than US$1 Million, with no inflation adjustment, to US$5 Million, with inflation adjustment.

S 1756 died, without any action at the end of 2008. Unfortunately, although we have held several hearings in the House regarding nuclear issues and our "Changed Circumstances Petition", not a single bill has been introduced to address these issues.

This is certainly a big step forward in the RMI's efforts to address the CCP. The increase in number of atolls would certainly be in line with the RMI's belief that the damages caused by the nuclear testing were not limited only to the 4-Atolls. Furthermore, it allows for an increase in funding to pay for the added atolls to the health care program.

One of the major impediments to providing quality health care is the high cost of medical care. With no inflation adjustment to the funds currently used to fund the 4 atoll health care program, and the high inflation rate of overall medical care, the program is having a difficult time surviving. It's to a point where the RMI government is forced to subsidize the health care program.

Rongelap Resettlement Issue

Recently, there has been a great deal of attention given to the Rongelap Resettlement Project as the clean-up of Rongelap Island nears completion. Regarding the decisions made by the people of Rongelap, acting through their local government's constitutional process, about resettlement of their homelands, the National Government understands that the Rongelap resettlement process is being administered under applicable agreements and provisions of national, local and U.S. law. These measures governing return of the Rongelap community, implement resettlement commitments of the United States under the law approving the Compact of Free Association.

We believe that the people of Rongelap should consult with their experts in moving forward in the next step of the resettlement process in accordance with their agreements so that they are able to make reasoned and informed decisions about the future of their community.

For our part the national government stands ready to assist the Rongelap leadership and people in any way it can to allow the Rongelap community at Mejatto and elsewhere to proceed with their resettlement plans and goals in a safe and timely manner.

Land Use Issues

Mr. Chairman, our Government continues our negotiations with the Kwajalein landowners in our efforts to produce a new Land Use Agreement (LUA) that is consistent with the new MUORA. We have held fruitful discussions with the Kwajalein landowners this past week, and had a meeting with Assistant Secretary of State for East Asia and Pacific Affairs with the participation of the Kwajalein landowners which helped in clarifying the way forward on implementing this very important part of the amended Compact.

Conclusion

The RMI's relationship with the United States is multi-faceted and complex. We continue to have critical legacy issues such as the enduring consequences of the U.S. Nuclear testing program and how we address these problems. We have current issues with the amended Compact in terms of maintaining the real value of grant assistance and assuring the future viability of the Trust Fund. And, we have issues that are both rooted in the past and the present such as the MUORA. You will hear a variety of views on these issues today from other witnesses, and we appreciate the opportunity to present these views before your sub-committee.

Thank you Mr. Chairman for hearing our testimony. I look forward to answering any questions that you or the committee might have.

Statement on behalf of the People of Utrok Atoll to the House Subcommittee on Asia, the Pacific, and the Global Environment
Washington D.C., May 20, 2010

Presented by: Minister Amenta Matthew & Mayor John T. Kaiko of Utrok Atoll

I.
Introduction

The impact of the Nuclear Testing Program on Utrok Atoll has been devastating. The lands of Utrok were blanketed by deadly radioactive ash from bombs ignited at the nearby Pacific Proving Grounds. The people of Utrok were exposed to levels of radiation several thousand times greater than that permitted in the United States under current Environmental Protection Agency regulations. The result was tragic. An epidemic of cancer, thyroid disease, birth defects and other health related complications swept through our community. Past remedies can be characterized as too little, too late, or nothing at all. Early medical programs were tailored to the needs of research scientists, and not healthcare. No clean-up was ever initiated, and other remedies have fallen short of what was needed. Today the Utrok Atoll Local Government seeks funds to clean-up the residual radiation on Utrok to provide adequate supplies of uncontaminated food for all of its people, funds to clean-up its homeland, and sufficient compensation for the suffering endured by the people of Utrok over the past decades.

II.
The history of Utrok and the Nuclear Testing Program

On the morning of March 1, 1954, the people of Utrok were thrust into the Nuclear age without warning. In the nearby Pacific Proving Grounds, the largest device ever tested by the United States was detonated. Deadly radioactive particles from the thermonuclear test, code named 'BRAVO' rained down upon the Utrok people within hours of the explosion. These particles looked like a very thick fog or mist and blanketed the entire atoll. No warning was given, nor were the people told that this 'fog' was in fact deadly radioactive ash. Unaware of the danger, the people went about their daily lives. They consumed food and water laced with radiation, breathed air filled with deadly particles and slept in houses covered with nuclear ash. Unknown to them at the time, the people of Utrok received an acute exposure estimated at approximately 50 rem (50,000 mili-rem) over a three day period. This exposure is over 3,000 times greater than annual exposures permitted by the US Environmental Protection Agency.

Three days after the test, the U.S. navy ship, the *USS Renshaw* came to evacuate the Utrok people. They were told that they were being evacuated because the mist that fell on Utrok was "poison" and they needed to leave. Over the next three months 5 more thermonuclear weapons were tested as part of the Castle series of tests, and more radioactive ash fell on Utrok atoll. Seven days after the last test, the people were returned to their badly contaminated atoll with assurances that it was a safe place to live. It is doubtful that these representations were sincere. In 1956, at a classified meeting of the Atomic Energy Commission Advisory Committee on Biology and Medicine a highly respected U.S. scientist, Dr. Merril Eisenbud, said Utrok was "*the most contaminated place in the world...* " and "*it will be very interesting to go back and get good environmental data, and determine what isotopes are involved, so as to get a measure of the human uptake when people live in a contaminated environment.* "[1] His view of the Utrok people was revealed in his statement that "*while it is true these people do not live, I would say, the way Westerners do, civilized people, it is nevertheless also true that these people are more like us that the mice.* "[2]

In the decades that followed, this pre-mature return to Utrok had devastating consequences. Most every families have lost a member to cancer. Miscarriages, stillbirths, and mutations ravaged the community. Before the bomb stillbirths were almost unknown, with only 1 recorded case. After 1954, 15 cases were reported. Miscarriages were also rare in the years prior to the testing. Only three miscarriages were documented before the testing. After 1954, that number increased to 41, well over ten times the pre-testing number. Additionally, many children born after the testing suffered from mutations.

Bella Compoj, in a 1981 interview about life after Bravo stated:

> I recall seeing a woman named LiBila after our return and her skin looked as if someone had poured scalding water over her body, and she was in great pain until she died a few years after "the bomb." LiBila had a son two years after 'the bomb' who died a few months after birth, and I remember that his feet were quite swollen and his body was burning--the AEC (Atomic Energy Commission) doctors said he died because of the "poison" ("radiation"). Also, after our return to Utrok, Nerik gave birth to something like the intestines of a turtle, which was very sticky like a jellyfish. Soon afterwards, many other women would be pregnant for about five months and then they turned out not to be pregnant after all. I too thought that I was pregnant and after three months I found I was not. This was quite new for the women here, and this never happened before the bomb.

The nightmare of severely deformed babies continues to plague Utrok. In 2005, five babies were born with terrible mutations, such as swollen heads, no ears, and other malformations. All of these children died within weeks of their birth.

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[1] Meeting of the Advisory Committee on Biology and Medicine, on January 13-14, 1956, at page 232 of the de-classified transcript.

[2] Meeting of the Advisory Committee on Biology and Medicine, on January 13-14, 1956, at page 232 of the de-classified transcript.

Today Utrok remains contaminated with residual radiation. Many members of the Utrok community are too fearful to reside on Utrok and have abandoned their homes. The dread of knowing that they are living on contaminated land and may at any moment suffer the fate of so many of their friends and loved ones is a nightmare not yet over.

III.
Inadequate response to the nuclear fallout disaster.

Cleanup: Tragically no clean-up was ever conducted on Utrok Atoll. As a result the community endured exposure to well over 100 rem (1,000,000 milirem) in the years after the testing. The Atomic Energy Commission (AEC) and later the Department of Energy (DOE) insisted that no clean up was needed. However, at the same time, the AEC Director of the Health and Safety Laboratory was referring to Utrok as the *"by far the most contaminated place in the world."*[3] Thus repeated claims by the AEC/DOE that no clean up was necessary simply lacks credibility. In fact, the evidence points in the opposite direction, and suggests that the Utrok people were intentionally left on a contaminated Atoll so that they may be studied as if they were guinea pigs or lab mice.

Healthcare: a. *DOE Healthcare Program* : In the wake of the Bravo catastrophe came the research doctors and scientists of the AEC and later the Department of Energy ("DOE"). As predicted by Dr. Eisenbud in 1954, the people of Utrok were not provided with comprehensive healthcare, rather they were the subjects of a scientific research program. As noted by a former resident physician; *"[t]he medical surveillance program as conducted by Brookhaven [DOE] is a research oriented program. Its goal is to focus on the narrow subject of what are the late radiation effects in the exposed Marshallese people."*[4] Rather than receiving comprehensive healthcare for the entire community, research teams were sent to Utrok for study. As a result the people of Utrok felt that they were the subjects of a scientific experiment. The people *"fail to understand how a doctor can come to their island and say he is only interested in radiation problems and that anything else is the concern of another doctor hundreds of miles away in the district center who they probably never see. It is no wonder that the people say that the survey team has a lack of interest in their general health care needs when the research effort is what the program emphasizes."* [5]

Today the current DOE Healthcare Program is still deficient and fails to meet the needs of its patients.

First, it is limited to radiogenic related illnesses, and thus does not meet all the healthcare needs of the people it serves. Refusal to treat all ailments is a fundamental structural flaw in the program, as patients today still do not understand why a doctor cannot treat all of their needs.

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[3] Meeting of the Advisory Committee on Biology and Medicine, on January 13-14, 1956, at page 232 of the de-classified transcript.

[4] Konrad P. Kotrady, M.D., THE BROOKHAVEN MEDICAL PROGRAM TO DETECT RADIATION EFFECTS IN MARSHALLESE PEOPLE: A comparison of the peoples' vs. the program's attitudes, 1 January 1977, at page 4.

[5] Konrad P. Kotrady, M.D., THE BROOKHAVEN MEDICAL PROGRAM TO DETECT RADIATION EFFECTS IN MARSHALLESE PEOPLE: A comparison of the peoples' vs. the program's attitudes, 1 January 1977, at page 5.

Second, it is limited to only those people present on Utrok on March 1, 1954. Thus, the program completely overlooks those who returned to Utrok and were chronically exposed to doses of radioactive fallout from July 1954 to the present. For many Utrok residents the cumulative doses over the years exceeds the acute dose suffered in the three days after "Bravo." "*It is believed that a single large dose of radiation and numerous low doses equal to the single large dose have much the same effect on the body.*"[6] As pointed out in the recently issued US President's Cancer Panel Report, and as shown by the rates of thyroid disease and other cancers, a low dose over time may be just as deadly as an equivalent acute dose. Thus the need to provide comprehensive care to the entire population of Utrok is amply justified.

Third, we feel that DOE's decision making process is inclusive and severely restrictive. The medical contractors who are chosen by the DOE which limits input from individuals who represent the patients and seem tied to a mindset that does not prioritize patient participation. Immediate reform is needed to re-structure the health care program to allow for genuine participation and input on the structure of the program. The President's Cancer Panel Report stated that: "*The Advisory Committee on Energy-related Epidemiologic Research (ACERER) should be rechartered, or a similar body convened, to enable individuals exposed to nuclear testing fallout and other nuclear exposures to participate in policy making and other decisions that will affect their healthcare and compensation related to those exposures.*"[7] We believe the DOE program should likewise undergo reform so that the patients have a direct say in choosing their healthcare providers, and such providers will be responsive to the needs of the patients rather than federal government program mangers.

Fourth, we think significant inefficiencies exist related to logistics, overhead, and the program's multi-layers of administration. For instance, the medical program is supervised by a DOE field officer, the logistics contractor, the general contractor and the medical sub-contractor. It would seem that a streamlined program could increase effectiveness while saving funds for actual healthcare services. Lastly, we are aware that a recent internal audit was completed on this program, and while our requests for a copy have not been granted, we believe the Committee would find the audit of interest in light of the concerns we are raising today.

b. *177 Healthcare Program*: The 177 Healthcare Program provided in the 177 Agreement is designed to provide primary, secondary and tertiary medical services to the people of Enewetak, Bikini, Rongelap and Utrok islands who were affected by the U.S. nuclear weapons testing program. The 177 Health Care Program's design was developed through the US Public Health Service (USPHS) in 1985. While the design of the program by the USPHS is laudable, having essential elements of primary, secondary and tertiary medical care. However, delivery of what was proposed by the USPHS has been impossible because of limitations in funding and the RMI health care infrastructure. As such, the small annual allotment of funding only allows us to provide primary care within this program. This year's funding for 177 healthcare program is under $1 million. In 2005, the program was funded at $2 million. So while the program's funding has decreased significantly, the populations of the four atolls it serves are increasing. Moreover, funding for this program is discretionary, and so without certainty or knowledge of its funding level from year to year we are unable to issue long-term contracts. This results in excessive turnover and additions costs associated with annual repatriation, as well as lack of continuity and experience.

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[6] Reducing Environmental Cancer Risk, 2008-2009, President's Cancer Panel, US Department of Health & Human Services, National Institute of Health, National Cancer Institute, page v, in the Executive Summary.

[7] Reducing Environmental Cancer Risk, 2008-2009, President's Cancer Panel, US Department of Health & Human Services, National Institute of Health, National Cancer Institute, page xvi, Recommendation #8 in the Executive Summary.

In addition to being woefully under-funded, the program lacks the professional expertise needed to diagnose and treat the exposed population. Since funding for this program is a fraction of what is needed to provide effective treatment, non-specialists are hired from third world countries who have no expertise in radiation or dealing with a population exposed to radiation. *"We're talking about cancers and radiation oncology, and in all the U.S.-associated Pacific there is one oncologist; that person is in Guam."*[8] The 177 Program simply does not and cannot provide the type of care needed by the exposed population of Utrok Atoll.

In summary, *"...the U.S. has not met its obligations to provide for ongoing health needs of the people of the Republic of the Marshall Islands resulting from radiation exposures they received during the US nuclear weapons testing in the Pacific from 1946-1958."*[9] The truth of this statement from the President's Cancer Panel Report is amply demonstrated by the lack of adequate healthcare provided to the Utrok community. The people of Utrok feel twice victimized; first by the radioactive fallout, and second by the DOE medical research program, and its inadequate successors, the current DOE program and the 177 Healthcare program.

Nuclear Claims Awards: As with other atolls, Utrok filed suit in the 1980s before the US Court of Claims for the damages caused by the Nuclear Testing Program. As part of the settlement in the original Compact of Free Association jurisdiction was removed from the Claims Court, and transferred to the newly established US-Marshall Islands Nuclear Claims Tribunal. Utrok spent seven years and thousands of dollars litigating its claim before the Tribunal. On December 15, 2006, the Nuclear Claims Tribunal rendered its decision, awarding the people of Utrok a total of $307,356,398.91 for loss of use of their land, clean up and consequential damages. To date, not one penny of this award has been paid.

The funds provided to the Tribunal for payment of all awards has been exhausted. US Courts have refused to hear the claims of Bikini and Enewetak, citing procedural grounds. As a result, Utrok, and other atolls, have been effectively cut off from judicial redress and denied a chance to have the merits of its claim heard by the US Courts.

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[8] Reducing Environmental Cancer Risk, 2008-2009, President's Cancer Panel, US Department of Health & Human Services, National Institute of Health, National Cancer Institute, Chapter 5, page 83.

[9] Reducing Environmental Cancer Risk, 2008-2009, President's Cancer Panel, US Department of Health & Human Services, National Institute of Health, National Cancer Institute, page ix, in the Executive Summary.

Currently, Utrok finds itself with an award that was made after a full and fair hearing before the Tribunal, which was authorized under US law to hear the award. However, Utrok has received no compensation as awarded by the Tribunal.

IV.

Whole Body Counter

There is also another important issue we would like to address with the Committee. In 2003, the Department of Energy established a Whole Body Counting (WBC) facility for radiological testing of the people of Utrok. Due to insufficient power supply on Utrok Atoll, the Department of Energy located the Utrok WBC on Majuro. As a result, the people who live on Utrok Atoll must travel to Majuro, which is approximately 250 miles away, in order to be tested at the WBC facility. The significant cost of air transportation and inconvenience to travel to Majuro from Utrok has led to infrequent and sporadic WBC testing of the inhabitants of Utrok. Congress acknowledged this problem when it passed legislation in 2004 to transfer a decommissioned NOAA vessel to Utrok Atoll for the purpose of helping to alleviate this transportation issue. While Utrok supported and welcomed that Congressional gesture, a professional analysis showed that if Utrok took possession of the vessel it would be a heavy financial burden, so unfortunately the NOAA vessel was not the solution.

So today, with only a portion of the Utrok community being tested, many are left unexamined. This is extremely problematic because recent WBC data gathered by Lawrence Livermore Laboratory has demonstrated that the people living on Utrok have received the highest body burdens of radionuclides of any group in the Marshall Islands. The people of Utrik strongly feel that relocating the WBC facility to Utrok is the right solution and is long overdue. Currently we are working to have language added to S. 2941 in the Senate that grants the Department of Energy the authority and funding necessary to construct a WBC facility with an adequate power supply on Utrok Atoll. In 2007, the Department of Energy estimated that establishing a WBC on Utrok is $850,000. We ask for your assistance on to help us with this request in the House of Representatives.

V.

Remedies needed for the people of Utrok.

Today many of the harms caused by the Nuclear Testing Program remain unresolved. Four specific remedies are sought to resolve the nuclear legacy.

> A clean up of Utrok Atoll should be undertaken to once and for all end the ordeal of further radiation exposure, and to assure the community that future generations will be free from the nuclear horror. This clean-up could be

accomplished by efficient use of funds already allocated by Congress for the Marshall Islands.

A comprehensive and inclusive medical monitoring and treatment program for the people of Utrok. The DOE program should be reformed, and the funding used for a new medical program tailored to meet the needs of the entire exposed population. Unlike the existing programs, the whole population should be included in a unified program designed to provide full care for all those who have been chronically exposed, not just those present on March 1, 1954. Perhaps this program can be reconstituted or consolidated under an improved and adequately funded health care program.

Increases in the supply of food from the Department of Agriculture provide sufficient provisions to all those citizens of Utrok whose lands have been contaminated by radiation. At present, food supplies are inadequate to meet the needs of the community. As a result, the people are forced to eat locally grown contaminated food, and are ingesting radioactive fallout.

"The U.S. Government should honor and make payments according to the judgment of the Marshall Islands Tribunal."[10] Utrok has received an award from the US-Marshall Islands Nuclear Claims Tribunal. A satisfactory and mutually agreeable resolution of Utrok's claim is necessary to bring to a close the nuclear legacy. The Utrok Atoll Local Government supports the proposal of a Congressional Referral of the awards to the US Court of Claims for evaluation. We believe a candid review of the merits of the awards of the Nuclear Claims Tribunal will vindicate the claims of the community and justify satisfactory payment to the affected peoples.

VI.
Conclusion.

The Utrok community has borne the brunt of the Nuclear Testing Program. Residing on one of the northern most atolls 'downwind' of the Test cites the people of Utrok suffered exposure to very high levels of radiation. The consequence was an epidemic of health consequences, which have forever scarred the community. Today, adequate healthcare, clean up, supplies of food free of radioactive contamination, and a settlement of the Nuclear Claims Tribunal's award are needed to conclude once and for all the dreadful experience of Utrok Atoll and the Nuclear age.

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[10] Reducing Environmental Cancer Risk, 2008-2009, President's Cancer Panel, US Department of Health & Human Services, National Institute of Health, National Cancer Institute, page xvi, Recommendation #8 in the Executive Summary.

STATEMENT OF SENATOR KENNETH KEDI
ON BEHALF OF THE PEOPLE OF RONGELAP
BEFORE THE HOUSE COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON ASIA, THE PACIFIC AND THE GLOBAL ENVIRONMENT
U.S. HOUSE OF REPRESENTATIVES

May 20, 2010

Mr. Chairman, I am very grateful that you have provided me the opportunity to testify before you today on behalf of the people of Rongelap.

I. Background

On March 1, 1954, the United States exploded a hydrogen bomb, code named 'Bravo', on Bikini Atoll. At 15 megatons 'Bravo' was a thousand times more powerful than the bomb dropped on Hiroshima and after the explosion there was a marked increase in the level of background radiation measured around the globe.

The inhabitants of Bikini and Enewetak were evacuated from their island homes prior to the nuclear tests to avoid exposure to radioactive fallout. The people of Rongelap, 150 kilometers away, were not so fortunate.

Within four hours of the explosion, fallout from Bravo was settling on Rongelap. A fine white ash landed on the heads and bare arms of people standing in the open. It dissolved into water supplies and drifted into houses. The snow-like debris fell all day and into the evening, covering the ground up to 2 centimeters thick.

Although U.S. authorities knew of the fallout pattern and the strong winds that had been blowing towards Rongelap on the day of the test, they made no attempt to evacuate our people for more than 48 hours.

From 1954 until 1957, the U.S. Naval doctors continued annual exams on the Rongelap community, documenting radiation levels and related health effects. Other scientists monitored the presence of radiation in the soil, water, plant, and marine life back on Rongelap. In 1957, Atomic Energy Commission scientists, noting that the levels of radiation on Rongelap were higher than any other inhabited place on earth, observed that returning the exposed people of Rongelap to their still-contaminated islands "*afforded a unique opportunity to study the movement of radiation through the environment, food chain, and the human body.*"

The extreme levels of radiation that existed on Rongelap were never made know to our people, and in June of 1957, without any radiological cleanup and with false assurances that our island was safe, our community was sent home. The record is clear – U.S. scientists from Brookhaven National Laboratory (BNL) set forth to use the people of Rongelap as guinea pigs to study the effects of radioactive fallout on humans.

The research and testing experiment took place, and decades passed. People from Rongelap and neighboring Utrok Atoll suffered from previously unknown health problems—thyroid cancer, stunted growth and retardation in children, high rates of miscarriage and congenital birth defects. With the outgrowth of these serious health problems it became clear to our people that our islands were still dangerously contaminated, a fact that became evident to scientists in the restudy of radiological conditions in the northern Marshall Islands in 1978.

The new findings were not, however, explained to the Rongelap people until 1982, when a representative from the U.S. Environmental Protection Agency informed residents that our islands were still highly radioactive. The Rongelap community asked to be evacuated; a request that the United States denied arguing that it was safe to stay so long as people avoided the northern islands in the Rongelap atoll and consumed imported canned food. In 1985, with the help of an international humanitarian group, the Rongelap people evacuated once again to Mejatto Island on Kwajalein Atoll.

In 1988, three years after our second departure from Rongelap, we learned more about the contaminated condition of our islands and health consequences. German scientist, Bernd Franke, after examining the results of BNL urine tests that showed toxic plutonium levels in blood streams, stated: "*I was totally stunned to see Brookhaven's tests were exceeding the limits. But they never told the Rongelap people living on the island. They left everybody in the dark and they violated the precepts of good science.*"

A short time later, U.S. funded radiological research confirmed that Rongelap still contained high levels of radioactivity. As a result, in 1990's the United States provided the Rongelap Atoll Local Government with a $45 million resettlement trust fund to finance cleanup and rehabilitation work on Rongelap. I will speak to the status of resettlement later in my testimony.

Mr. Chairman, the heart-wrenching and searing testimonies of the Rongelapese who either experienced severe health complications first-hand or had loved ones who suffered and died due to the effects of radiation exposure are numerous. I believe it is important for the members of this Committee --for that matter, all Members of Congress -- to read some of these accounts so they can gain a real understanding of the personal and human-side of this great tragedy.

An excellent book was written by Barbara Rose Johnston and Holly Barker in 2008 titled: *The Rongelap Report – Consequential Damages of Nuclear War*, which comprehensively chronicles the physical, financial, psychological damages to our people and our cultural following the U.S. nuclear testing program. This great work also incorporates the poignant testimonies of several exposed members of our community. So rather than providing excerpts from a just a few individuals, I strongly encourage the Members of this Committee to read this book which is a vivid narrative on the impact of nuclear fallout on our people.

II. Rongelap's Nuclear Claims Tribunal Award

In April of 2007, the Nuclear Claims Tribunal, which Congress created and was established in 1988 to determine the past, present, and future claims of the Marshallese people related to the nuclear testing program, awarded Rongelap claimants $1,031,231,200 in compensation for damages to our land and for health related issues. The tribunal determined that the people of Rongelap had been ill-served by the doctors, who were under contract for the U.S. government from 1955 until 1998. In assessing damages, the tribunal accepted the testimony of Marshall Islands residents, as well as experts, that the doctors' primary responsibility to address medical concerns was secondary to the goal of studying the effects of nuclear radiation on the human body.

The tribunal found that the BNL doctors sent the Rongelap community home in June 1957 -- even though they knew it was highly contaminated, and they failed to share that knowledge with the people. Moreover, BNL doctors and scientists didn't adequately warn the Rongelap people about eating local foods polluted by atomic fallout. Instead, they used it as a chance to study the flow of radiation through the body. I ask that the Committee examine the entire Nuclear Claims Tribunal award for Rongelap, and I also ask for permission to submit that document into the Committee Record.

As we know, the Nuclear Claims Tribunal (NCT) was never adequately funded, and Roneglap has not received a penny of their $1 billion award. The inadequacy of the NCT is one of the main issues of this hearing today, and we seek your assistance on a mutual resolution to this critical matter. We also support the introduction of a Congressional Reference resolution related to the NCT awards. The Congressional Reference resolution is an issue that other witnesses will discuss in more detail today.

III. Rongelap Resettlement Program

I mentioned the Rongelap Resettlment program earlier in my testimony, and I would like to provide an update on this very important matter.

The Rongelap Resettlement program is moving along with tremendous progress and the people of Rongelap are eager to resettle to their homeland. Since 2000, through the funds provided by the Rongelap Resettlement Trust Fund, the Rongelap Atoll Local Government has completed several significant infrastructure projects and homes have begun to be built.

While the progress has been considerable, existing radiological concerns and other practicalities need to be addressed before we can resettle back to Rongelap. There is no questioning our peoples' strong commitment toward resettlement, and while we aspire to the goal of being back on our atoll in the near future, it needs to be acknowledged that there is still widespread concern about radiation levels on Rongelap.

In addition, a U.S. entity has brought suit against our local government seeking to take control of Rongelap island which is currently being contested. As this lawsuit in presently in litigation, it would only be prudent to postpone further building construction until this case is resolved and the title of the land is secured.

Therefore, we ask that the Department of Interior to provide us the flexibility to work through these serious issues. We strongly believe that establishing an imminent deadline for the purpose of placing severe limitations on our use of the Resettlement Trust Fund before these issues are adequately resolved would be counterproductive to the successful resettlement of Rongelap.

A. Radiation Protection Standard

I would like to elaborate further on the radiological concerns as this is the most significant issue surrounding resettlement at this time. The safe radiation level standard which is currently applied to our resettlement process was one that was universally accepted at the time we set forth the resettlement agreement in the 1990's. Since that time however, a lower threshold had been adopted by the U.S Environmental Protection Agency (EPA). Prior to the late 1990s, when our agreement was enacted, a safe level of radiation was considered to be 100 millirems (mrem) above background levels of radiation. In 1997, EPA formally adopted a standard of 15 mrem above background for clean-ups under the Superfund. The 15 mrem standard is also being applied to Yucca Mountain, NV, the site of proposed high-level nuclear storage.

In our view, if the 15 mrem standard is what the United States applies when it conducts remediation on nuclear-related sites in its own country, then clearly this is the standard that should be adopted for radiological clean-ups in Rongelap, as well as other impacted areas of the Marshall Islands. Moreover, it should be noted that the Nuclear Claims Tribunal adopted the EPA's 15 mrem standard in determining clean-up costs for Rongelap and the other three atolls irradiated by the nuclear testing.

We understand that our request to comport with the 15 mrem standard may require a modification to our existing MOU related to resettlement. Consistent with our original agreement, the scientific studies and safety determination would be made by independent scientists and based off a diet that reflects a traditional lifestyle.

We feel strongly that our request to be held to the EPA radiation standard is not only reasonable and justified, but consistent with the moral obligation of the U.S. to properly recognize our history with its nuclear testing program.

B. Pantry Island Remediation

Another major concern of our people is that pantry, or food gathering, islands of Rongelap Atoll have not been cleaned. For reasons we understand, the nuclear remediation work has focused first on the main island, however, if an additional scope of radiation clean-up on the pantry islands is pursued, it would provide the safeguards and assurances that many of the people of Rongelap need in order for them to confidently return to their homeland. Moreover, we believe it is possible this can be done at a relatively modest cost with potassium fertilizer treatments. Therefore, we ask that targeted clean-up of a small number of pantry islands be undertaken before the actual resettlement process occurs.

C. The 100 mrem Standard: Has It Been Achieved?

While I have detailed our request to be held to the 15 mrem standard, according to reports from independent scientists who have conducted tests on Rongelap, there are some parts of the island that do not meet the existing 100 mrem standard. Scientist Bernd Franke, who served as a member of the Scientific Management Team of the Rongelap Resettlement Project from 1992 to 1994 (and who conducted a follow-up report in 2006), has submitted information to the Committee which details the areas of Rongelap Atoll which appear to have not achieved the 100 mrem standard.

It is also important for the Committee to be aware that there are other voices, besides our own, that share existing radiological concerns on Rongelap. Just last week, Robert Alvarez, a Deputy Assistant Secretary for National Security and Environmental Policy in the Department of Energy from 1993 to 1999, stated in the Marshall Islands Journal that *"Until the U.S. government can assure that steps to mitigate does below 100 millirem are demonstrated by applying potassium fertilizer, effort to force the Rongelap people back to home is unjustified and unfairly places the burden of protection of the Rongelap people."*

D. Successful Resettlement of Rongelap

We believe the remedies to address our concerns can be accomplished in a time frame that will allow us to begin resettlement in the not-too-distant future. In the meantime, we implore our partners at the Department of Interior to refrain from dictating a rigid and ill-timed deadline that would restrict our access to the resettlement trust fund. If the resettlement process continues forth without consideration of our concerns, it is doomed to fail. I know that is not what the U.S. wants, and more importantly, that is not what our people want. There can be no mistaking our commitment to resettlement -- we want to go back to Rongelap!

We share with the U.S. government the mutual goal of resettling to our homeland. We are grateful for the resettlement trust fund that the U.S. government established for the people of Rongelap, and we can be optimistic about the progress that has been made thus far. However, in order to achieve a successful resettlement, we are merely asking the Department of Interior and the U.S. Congress to be sensitive to our history of three evacuations in 39 years, our deep-seated fears of radiological contamination, and the permanent scars that we bear from the nuclear testing legacy.

IV. The DOE Marshall Islands Program and the USDA Food Program

Before I conclude my statement, I want to briefly discuss both the Department of Energy Marshall Islands Program and the USDA Food Program.

A. Department of Energy Program

The Department of Energy (DOE) Marshall Islands Program, which began in 1977, is funded by the U.S. at roughly $6 million a year and has two components. The first is a medical program that provides annual screenings and medical treatment to the remaining members of the population of Rongelap and Utrok who were exposed to radiation resulting from the Bravo test. The second component encompasses environmental monitoring and assessments of the radiological conditions on Bikini, Enewetak, Rongelap, and Utrok.

We believe both aspects of this program need to be re-examined and reformed. There is a general lack of confidence in the manner and way in which this program operates within the Rongelap community. We hope that you are open to examining ways that would not only make this program more effective and efficient manner, but where the dollars are delivered in a way that best addresses the interests and needs of the atoll populations it serves.

We would be interested in discussing with you in more detail our experiences and views about this program at some point in the near future. However, one suggestion we would like to make is for Congress to request that a comprehensive General Accounting Office (GAO) investigation be conducted which fully examines all aspects of the DOE Marshall Islands program.

B. USDA Food Program

The USDA food program was initiated years ago to supplement the food needs of the people displaced from Bikini, Enewetak, Rongelap, and Utrok. It is a valuable program, but unfortunately it does not adequately account for the actual population of the four atolls. All four atolls have come together to petition USDA to re-examine our population levels so our food allotment appropriately meets the dietary needs of the people this program is intended to serve. However, any assistance you can provide in facilitating and supporting our request would be greatly appreciated.

V. Conclusion

Mr. Chairman, you have been a tireless advocate on behalf of the people of the Marshall Islands, and we are extremely grateful for your sincere attention to our issues. We hope that in a unified manner, we are bringing to you today approaches and solutions that not only address our current situation, but are remedies that can be achieved. There are few individuals in Washington who understand the details of our plight as you do, so we ask for your direct assistance on these very significant matters. Our people continue to hold out hope that we will be afforded an appropriate level of assistance and compensation given all that we now know about the impact of the U.S nuclear testing program in the Marshall Islands. We will of course do whatever we can to help you succeed on our behalf here in Washington.

Thank you again for holding this hearing and allowing me to testify today.

STATEMENT OF THE HONORABLE JACK ADING
ON BEHALF OF THE ENEWETAK PEOPLE
BEFORE THE HOUSE COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON ASIA, THE PACIFIC
AND THE GLOBAL ENVIRONMENT
U. S. HOUSE OF REPRESENTATIVES

May 20, 2010

Submitted by the Honorable Jack Ading
Minister of Finance, Republic of the Marshall Islands;
Elected Representative of the Enewetak people
to the Nitijela (Parliament) of the Republic of the Marshall Islands

Mr. Chairman and distinguished members of this Subcommittee:

On behalf of the Enewetak people, I thank you for providing me with an opportunity to describe to you and to members of this committee the challenges facing my people who are the only people ever resettled on a nuclear test site.

In this statement, I describe what we, the Enewetak people, experienced, and continue to experience, as a result of use of our land for nuclear testing by the United States. And, I hope to describe what needs to be done so that we have an opportunity to once again be self-reliant and self-sufficient.

In addition, we intend to mention other issues, some addressed by the Compact, others which need to be addressed by the U.S. whether in the Compact or otherwise. These issues relate to our ability to live on Enewetak and include: funding of a health care program, monitoring of our people for radiation exposure, continued and increased funding of the Enewetak Food and Agriculture Program, and monitoring of the U.S. created radiation waste site known as the Runit Dome.

Enewetak Atoll as a Nuclear Test Site

As you know, our ancestral homeland, Enewetak Atoll, was the site of forty-three of the sixty-six nuclear tests conducted by the United States in the Marshall Islands between 1946 and 1958. One of the tests at Enewetak was especially significant as it was the first test of a hydrogen bomb. This test occurred on October 31, 1952 and was known as the "Mike" test. The test had a yield of 10.4 megatons (750 times greater than the Hiroshima bomb). The destructive power of the Mike test was exceeded only by the Bravo test (15 megatons) in all the nuclear tests conducted by the United States anywhere. The Mike test vaporized an island, leaving a crater a mile in diameter and 200 feet deep. The Mike test detonation and the detonation of the other 42 nuclear devices on our land resulted in the vaporization of over 8% of our land and otherwise devastated our atoll. The devastation is so severe that to this day, fifty-two years after the last nuclear explosion, over half of our land and all of the lagoon remain contaminated by radiation. The damage is so pervasive that we cannot live on over 50% of our land. In fact, we can't even live on any part of our land without the importation of food.

How was it that the most powerful country on earth used our land for its nuclear weapons tests? Well, the United States had full control over the Marshall Islands after World War II, and it decided that Enewetak Atoll would be a more suitable test site than Bikini Atoll. There was a problem, however; we lived on that land and we owned that land. In fact, it was the only land we ever owned. Generations after generations of our ancestors worked the land, planted food crops, built homes, and otherwise made the land productive. So, how could we be removed?

The United States removed us from our homeland because it had the power to do so. But, the U.S. recognized that we had rights and it had responsibilities and obligations to us as a result of that removal.

These rights, responsibilities and obligations were described in the memorandum attached to the Directive of President Harry Truman providing for our removal from our land. President Truman's Directive to the Secretary of Defense, dated November 25, 1947, reads as follows:

> *Dear Mr. Secretary:*
> *You are hereby directed to effect the evacuation of the natives of Eniwetok Atoll preliminary to the carrying out of tests of atomic weapons early in 1948, and in accordance with the enclosed memorandum addressed to me by the Chairman of the Atomic Energy Commission.*
>
> *Sincerely yours,*
>
> *HARRY S. TRUMAN*

The memorandum attached to President Truman's Directive described the rights we had and the responsibilities and obligations assumed by the United States. The memorandum reads in relevant part as follows:

> *1. They will be accorded all rights which are the normal constitutional rights of the citizens under the Constitution, but will be dealt with as wards of the United States for whom this country has special responsibilities.*
> *2. The displacement of local inhabitants will be kept to a minimum required for their own safety and well being and will not be accomplished merely for considerations of convenience.*
> *3. The displacement of local inhabitants will be effected by agreements reached with them regarding resettlement, including fully adequate provisions for their well being in their new locations.*
> *The Atomic Energy Commission and the Secretary of Defense will undertake to supply to the State Department evidence sufficient to demonstrate in an international forum that in conducting such experimentation in Eniwetok, the United States is not thereby subjecting the local inhabitants of the Trust Territory of the Pacific to perceptibly greater danger than, say, the people of the United States.*

In a dispatch from Admiral Ramsey, the Chief of Naval Operations, dated 5 December 1947, our rights and the responsibilities and obligations of the United States were summarized as follows:

> *PURSUANT TO ORDERS FROM THE PRESIDENT THE SECRETARY OF DEFENSE HAS DIRECTED SECNAV TO EFFECT THE EVACUATION OF THE NATIVES OF ENIWETOK.*
>
> *IN RECOMMENDING THIS ACTION THE ATOMIC ENERGY COMMISSION STATED THAT THE INHABITANTS OF THE ATOLL WOULD BE ACCORDED THE NORMAL CONSTITUTIONAL RIGHTS ACCRUING TO U S CITIZENS UNDER THE CONSTITUTION AND TREATED AS WARDS OF THE UNITED STATES; AND THAT ADEQUATE PROVISION WOULD BE MADE FOR THEM IN THEIR NEW LOCATION.*

So, the U.S. recognized that we had constitutional rights. That means that we, as the owners of property used by the U.S., were entitled to just and adequate compensation for the use and damage of our land.

In addition, we were promised that we would be taken care of while exiled from Enewetak and that we would be placed in no greater danger than the people of the U.S.

None of these promises were kept by the U.S.: We were not taken care of during our 33 year exile from Enewetak; we were placed in greater danger than people in the U.S. as a result of the test; and we have yet to receive the just and adequate compensation to which we are entitled under the Constitution.

To better understand these unkept promises, we believe that it is useful to review the history of the use of Enewetak by the United States, our experiences as a result that use, the effect of that use on us and our land, and the unfinished obligations of the U.S.

U.S. Use Of Enewetak From 1947 To 1980

The U.S. used Enewetak for a variety of purposes between 1947 and 1980. U.S. use consisted of nuclear weapons testing, intercontinental ballistic missile testing, high energy rocket testing, cratering experiments, the study of marine biology, and radiological remediation and soil rehabilitation efforts.

Nuclear Weapons Testing. The U.S. Department of Energy described the devastating effects of the 43 nuclear tests on Enewetak as follows:

> *The immense ball of flame, cloud of dark dust, evaporated steel tower, melted sand for a thousand feet, 10 million tons of water rising out of the lagoon, waves subsiding from a height of eighty feet to seven feet in three miles were all repeated, in various degrees, 43 times on Enewetak Atoll.*

About 8% of the land mass of the atoll was vaporized, numerous nuclear bomb craters doted the land mass, and much soil and most vegetation was either removed or severely disturbed. In addition to such physical damage, the testing left most of the atoll contaminated by radiation.

Intercontinental Ballistic Missile Testing. During the 1960's, Enewetak was the target and impact area for tests of Intercontinental Ballistic Missiles fired from Vandenberg Air Force Base in California.

High Energy Upper Stage (HEUS) Rocket Tests. In 1968 and 1978, two test firings of a developmental HEUS rocket motor were conducted on Enjebi Island. The rocket motors tested each contained 2,500 pounds of propellant of which 300 pounds was beryllium. Beryllium is toxic to man when inhaled and lodged in the lungs. The first test, in April 1968, resulted in an unexpected explosion which scattered propellant, including beryllium, over the western tip of Enjebi. The second test in January 1970 fired successfully scorching the land but did not result in an explosion.

Pacific Cratering Experiments. This program occurred in the 1970's and involved the detonation of charges of high explosives to provide a means of predicting the impact of nuclear detonations upon strategic defense installations. This resulted in twelve detonations of 1,000 pound charges, drilling of over 190 holes into various islands of the atoll from 200 feet to 300 feet in depth, movement of 185,000 cubic yards of soil, and the digging of 86 trenches on various islands each 7 feet deep.

Marine Biology Research Laboratory. The laboratory began operations in 1954 under the auspices of the Division of Biology and Medicine of the U.S. Atomic Energy Commission. Research supported by the laboratory was chosen by an advisory committee which evaluated written proposals concerning a broad spectrum of marine and terrestrial science. This activity continued into the early 1980's.

Radiological Remediation and Resettlement Activities. The United States undertook a radiological remediation and resettlement program that took place from 1977 to 1980. Unfortunately, this effort left half the atoll contaminated, left the habitable parts without vegetation or topsoil, prevented the Enjebi island members of our community from resettling on their land in the northern part of the atoll, left the lagoon contaminated with plutonium, left a concrete waste storage site filled contaminants radioactive for thousands of years, and left the heavily contaminated island of Runit without any radiological remediation whatsoever.

While this use of Enewetak was going on, we lived on Ujelang Atoll.

Removal To Ujelang Atoll

A few days before Christmas in 1947, the U.S. removed us from Enewetak to the much smaller, resource poor, and isolated atoll of Ujelang. We were told by the U.S. that our removal would be for a short time. In fact, Captain John P. W. Vest, the U.S. Military Governor for the Marshall Islands told us that our removal from Enewetak would be temporary and last no more than three to five years. Unfortunately, we were exiled on Ujelang for a period of over thirty-three years.

Hardship On Ujelang

The exile on Ujelang was particularly difficult for us leading to hopelessness and despair. During the 33 year exile on Ujelang we endured the suffering of near starvation. We tried to provide food for ourselves and our children, but one meal a day and constant hunger was the norm. Malnutrition caused illness and disease. Children and the elderly were particularly vulnerable. Health care was woefully inadequate. In addition, our children went largely uneducated in the struggle for survival. We became so desperate that in the late 1960's we took over a visiting government field-trip ship, demanding that we be taken off of Ujelang and returned to Enewetak.

Our suffering and hardship while on Ujelang was eventually acknowledged by the U.S. The U.S. Department of Interior in a letter to the President of the U.S. Senate, dated January 14, 1978, said, in relevant part:

> *The people of Enewetak Atoll were removed from their home atoll in 1947 by the U.S. Government in order that their atoll could be used in the atomic testing program. The people were promised that they would be able to return home once the U.S. Government no longer had need for their islands.*
>
> *During the thirty years that the Enewetak people have been displaced from their home atoll they have suffered grave privations, including periods of near starvation, in their temporary home on Ujelang Atoll. The people have cooperated willingly with the U.S. Government and have made many sacrifices to permit the United States to use their home islands for atomic testing purposes.*

The physical difficulties experienced on Ujelang were made more difficult by the loss of our ancestral homeland. We have close ties to our land. These close ties were forged by centuries of making a life on our land. Our ancestors worked the soil and nurtured the plants. We buried our dead on our land. We feel that we are a part of the land and it is a part of us. Our connection with our land is spiritual in nature. It is of great meaning because it was the one place in the world given to us by God. And this was taken away from us causing us to live lives of hardship, neglect, and isolation on Ujelang. It is no surprise that after years of hardship, neglect and isolation we became increasingly insistent that we be returned home. Eventually, the U.S. said it would attempt to make our homeland habitable.

Initial Cleanup Attempt Of Enewetak Atoll

In 1972, the U.S. said that it would soon no longer require the use of Enewetak. The U.S. recognized that the extensive damage and residual radiation at Enewetak would require radiological cleanup, soil rehabilitation, housing and basic infrastructure before we could resettle Enewetak. An extensive cleanup, rehabilitation and resettlement effort was undertaken between 1977 and 1980.

Unfortunately, the cleanup left over half of the land mass of the atoll contaminated by radiation confining us to the southern half of the atoll. This has prevented the Enjebi island members of our community from resettling their home island, and has prevented us from making full and unrestricted use of our atoll. In addition, the cleanup and rehabilitation was not effective in rehabilitating the soil and revegetating the islands. An extensive soil rehabilitation and revegeatation effort is still required to permit the growing of food crops. The cleanup also left us with a radioactive waste site on the island of Runit. Over 110,000 cubic yards of radioactive waste, which consist of radiation contaminated dirt scrapped off the islands, are stored in a nuclear test-created crater on Runit Island.

Enewetak Claims In The U.S. Claims Court

When we resettled on the southern half of our atoll, we recognized then, for the first time, that the land required further restoration (radiological remediation, soil rehabilitation, and revegetation), that the Enjebi island members of the Enewetak community needed to be resettled on their home island, and that we were never adequately compensated for the loss of use of our land and the hardships we endured during our exile. To accomplish restoration, resettlement of the northern islands, and to be justly compensated for the 33 years we were denied use of our land, we filed an action against the U.S. for damages in the U.S. Claims Court in 1982.

In addition to the Enewetak lawsuit, thirteen other lawsuits were filed in the U.S. Claims Court by our fellow Marshall Islanders seeking compensation from the U.S. for damages as a result of the nuclear testing program.

U.S. Accepts Responsibility For Damages Resulting From The Nuclear Testing Program In The Compact Of Free Association

While these lawsuits were pending, the Compact of Free Association went into effect. In Section 177 of the Compact, the U.S. confirmed its constitutional obligations, first described in President Truman's 1947 directive, when it accepted responsibility for compensation owing to Marshall Islanders for loss or damage to property and person resulting from the nuclear testing program.

After the Compact of Free Association went into effect, the U.S. moved to dismiss our claims. We opposed dismissal on several grounds, most notably on the ground that the compensation provided under the Compact was inadequate and did not constitute just compensation under the Constitution. In 1987, the Claims Court dismissed these cases holding that it lacked subject matter jurisdiction over these claims because the consent of the U.S. to be sued on those claims had been withdrawn in conjunction with the establishment of a Marshall Islands Nuclear Claims Tribunal to provide just compensation. The Claims Court recognized that the adequacy of the amount provided to Marshall Islanders under the Compact was to be determined by the Nuclear Claims Tribunal.

Enewetak Claims In The Nuclear Claims Tribunal

After our claims were dismissed by the U.S. courts, the only forum available to hear our claims was the Nuclear Claims Tribunal. Our claims before the Tribunal were for the loss of use of our land, for the costs to restore our land to a condition of full and unrestricted use, and for the hardship and suffering we endured while in exile on Ujelang. In 2000, the Tribunal, following well established U.S. constitutional, legal, and regulatory principles, determined that the compensation to be provided to us was an amount of $386 million after deducting all compensation received by us from the U.S.

However, the Tribunal's Compact funding was limited to $45 million to pay personal injury and property damage awards. Due to the inadequate funding of the Tribunal, the Tribunal has been able to pay out a total of only $1.6 million on our Tribunal award — or less the 4/10 of one percent of the actual award. Now, in 2010, the Tribunal's funding has been exhausted and our award remains unpaid.

Changed Circumstances Petition

In September 2000, the Marshall Islands government filed a petition with the U.S. Congress, requesting additional funds to cover unpaid Tribunal awards due to "Changed Circumstances" pursuant to Article IX of the Section 177 Agreement. To date, Congress has not acted on the petition, although a January 24, 2005 State Department letter advised Congress that the petition should be denied.

Claims Before The Court Of Federal Claims

After six years of effort to get our Tribunal award paid by the U.S. proved unsuccessful, we filed an action in the U.S. Court of Federal Claims seeking damages in the amount $384 million – the amount awarded to us by the Nuclear Claims Tribunal, less the amount received.

Although the $384 million award is a significant amount, it is only a fraction of the amount that was expended to create the damage at Enewetak. It is also a fraction of the amount necessary to cleanup sites in the U.S. contaminated as a result of the nuclear weapons testing program. The U.S. DOE has revised its cleanup estimates upwards to $168 billion to $212 billion for the cleanup of U.S. sites contaminated as a result of the nuclear weapons testing program.

It is also noteworthy that a few years ago the U.S. Congress appropriated over $400 million for the cleanup of Kahoolawe Island, yet that site is affected by material that is non-nuclear and non-toxic.

Dismissal Of Our Claims Because Congress Withdrew U.S. Courts' Jurisdiction

Our action and the action of the Bikini people in the U.S. Court of Federal Claims filed in 2006 were dismissed. We, and the Bikini people, appealed the dismissal. In affirming the dismissal the U.S Court of Appeals for the Federal Circuit concluded that U.S. courts had no power to hear the claims of the Bikini and Enewetak people because Congress, in the 177 Agreement, withdrew the jurisdiction of U.S. courts to hear such claims. In addition, the court concluded that the remedy for the claims of the Bikini and Enewetak people essentially lies with Congress. See, *People of Bikini v. United States*, No. 2007-5175 (Fed. Cir.), *Ismael John et al. v. United States*, No. 2007-5176 (Fed. Cir.), 554 F.3d 996, 1001 (Fed. Cir. 2009).

What Congress Can Do

The citizens of the U.S. benefited greatly by having the nuclear testing conducted at Enewetak Atoll far from the U.S. mainland thereby avoiding the damaging health and environmental consequences of radioactive fallout. Enewetak's land, lagoon and reef were sacrificed for the benefit of the people of the United States. We bore, and continue to bear, the burden of a damaged and radiation-contaminated homeland. We also endured suffering and hardship the consequences of which continue to affect our community to this day. The U.S. accepted responsibility for the damages it caused at Enewetak, and it agreed that the Tribunal was to determine just compensation. It has done so. Now the claims and the award must be addressed and that is precisely what Congress can do. As the U.S. courts have stated, the remedy with regard to the claims of the Enewetak people lies with Congress.

We believe that the best way for Congress to address the claims of the Enewetak people is to have the matter referred to the United States Court of Federal Claims pursuant to the congressional referral process. That process will enable a body familiar with the type of claims examined and addressed by the Tribunal to again examine those claims, and the resulting awards, and provide a recommendation to Congress regarding disposition of the claims.

I want to emphasize that we remain a friend of the United States. In fact, my son, as many other Marshallese, is a member of the US military and a veteran of action in Iraq and Afghanistan. We fight side by side with Americans for values dear to us all. One of those values is to provide adequate compensation when government damages and uses private property. This is not a novel idea. It is enshrined in the Constitution and is based on centuries old legal principles that apply to government and private parties alike. For example, the US is insisting that people be fully compensated for the damage done by the oil spill in the Gulf of Mexico. Similarly, we insist that we be fully compensated for the damage done to our atoll and to our people by the nuclear testing program. We need your help to right this wrong – a wrong that has gone on for much too long.

Mr. Chairman we look forward to working with you to address how best to right this decades long wrong.

Other Issues That Relate To Our Ability To Live On Enewetak

Although resolution of our nuclear damage claims is the issue most important to us, there are other issues that affect our ability to live on Enewetak. These include, funding of a health program; radiation monitoring of our people, our environment, and the U.S created nuclear waste site at Runit Island; and, increased funding of the Enewetak Food and Agriculture Program.

Funding of the Health Care Program

In Section 102 of Public Law 96-205, the Congress authorized a program of medical care and treatment for the peoples of the atolls of Bikini, Enewetak, Rongelap, Utrik and other Marshallese determined to be affected as a result of the U.S. Nuclear Testing Program in the Marshall Islands. The funding for such program continued, in an amount of $2 million annually for 15 years, under the terms of the Compact. The 15 year funding for such medical care and treatment program expired as of October 21, 2001, although the program has been funded at a much reduced level since then and is only funded on a year-by-year basis.

Long term funding is necessary to continue the program. We appreciate the funding for such program provided by the Congress in the amount of $1 million for FY 2010. However, continued funding in an amount of at least several million dollars per year is required to maintain the key elements of the program which provide for an on-site physician for each of the four atolls, necessary medicines and supplies, funding for a health aide for each atoll, and funding for care of the people of the four atolls at the hospitals in the Marshall Islands when required.

Radiation Monitoring of the People, the Environment, and Runit Island

Because of the residual radiation contamination at Enewetak Atoll, we and our environment need to be monitored. We have reached an agreement with the U.S. Department of Energy (DOE) on an appropriate whole body counting and plutonium detection regime for our people. The DOE's responsibilities under such a regime need to continue until Enewetak is radiologically remediated. In addition, the Runit Dome (Cactus Crater Containment Site) contains over 110,000 cubic yards of material including plutonium and other radioactive debris. This site needs to be monitored to assure the integrity of the structure and to assure that no health risks from the radioactive waste site are suffered by us. To effect the foregoing, a long-term stewardship program of the Runit Dome and the remainder of Runit Island needs to be implemented by the U.S.

Increased funding of the Enewetak Food and Agriculture Program

This program is necessary because over one-half of Enewetak remains contaminated by radiation. The remaining fifty percent of the land was turned into a desert-like wasteland in the course of the nuclear testing program. As a result of such activities, there is insufficient food and other resources on Enewetak atoll to support the people.

Congress has provided a sum of not less than $1.3 million annually for 20 years for the Enewetak Food and Agriculture Program in the Compact. The Enewetak people greatly appreciate such mandatory funding. Congress has found it appropriate to provide the program with an additional $500,000 per year and such additional sum has been provided for several years. Consequently, the total program funding for FY 2010 is approximately $1.95 million and such funding level needs to continue to maintain the minimum components of the program. The components of the program include a soil and agriculture rehabilitation program, the importation of food, and the operation of a vessel. Much progress has occurred over the past several years with regard to the agriculture rehabilitation effort. In addition, we have become more and more involved with the soil rehabilitation effort and the planting and maintenance of food bearing plants. Funding of the program with the additional $500,000 these past several years has helped the program keep up with inflation and has created a momentum that we would like to maintain. Therefore, we ask that the Congress continue annual funding of the program as provided in the Compact plus the additional $500,000 per year necessary to maintain the minimum components of the program.

Conclusion

We thank this subcommittee for the opportunity to express our concerns relating to the Compact, the nuclear testing program that occurred on our homeland, the resolution of our nuclear damage claims, and for the opportunity to describe the challenges we face as the only population ever resettled on a nuclear test site.

STATEMENT OF THE HONORABLE TONY A DEBRUM

BEFORE THE HOUSE COMMITTEE ON FOREIGN AFFAIRS

SUBCOMMITTEE ON ASIA, THE PACIFIC AND THE GLOBAL ENVIRONMENT

U.S. HOUSE OF REPRESDENTATIVES

MAY 20, 2010

SUBMITTED BY THE HONORABLE TONY A DEBUM

SENATOR, REPUBLIC OF THE MARSHALL ISLANDS

ELECTED REPRESENTATIVE OF THE PEOPLE OF KWAJALEIN ATOLL

TO THE NITIJELA, (PARLIAMENT) OF THE MARSHALL ISLANDS

Mr. Chairman,

I thank you for this special opportunity. I am here as a Senator from Kwajalein Atoll in the National Parliament of the Marshall Islands, the Nitijela. With me from Kwajalein are Iroij Senator Michael Kabua, Iroij Senator Christopher Loeak, Iroij Rod Nakamura, Senator Jeban Riklon, Alap Fredley Mawilong, and Alap Irumne Bondrik. We appear before you today representing the four Traditional Leaders of Kwajalein: Iroijlaplap Imata Kabua, Iroijlaplap Anjua Loeak, Iroijlaplap Nelu, and Leroij Likwor Litokwa, all their elders, and all the people who belong to Kwajalein. This all inclusive leadership and grass roots delegation is unique in this aspect but is also reflective of our fervent desire to find a solution to the continuing disagreement which threatens to undermine the long and enduring relationship between our two countries.

The story of Kwajalein is not new to the Honorable Members of this Committee. Kwajalein continues to play a significant role in America's quest for superiority in military technology as well as in lending support to the many diverse efforts of the United States to maintain international peace and security. Since 1944, Kwajalein has been an integral part of America's defense, from its early days of serving as a naval air base, through its role as support base for the testing of Nuclear Weapons in the Marshall Islands from 1946-1958, to its present status as America's foremost testing facility for its missile defense programs. The Marshall Islands are a proud and reliable friend of the United States, and Kwajalein is an indispensable component of that friendship.

But Kwajalein has also earned a darker side in this union. While constantly being reminded of its importance to relationship, Kwajalein has had to bear, like the nuclear detonation sites in our country, the brunt of American military presence in the freely associated states. The social conditions of Ebeye, where the displaced population of Kwajalein Atoll now reside, have been the stuff of critical press for decades. We have won the title of being the slum of the Pacific, the suicide capital of Micronesia, the US Army's cheap labor camp, and the even more unfriendly misnomers associated with diseases like polio, sexually transmitted diseases, cholera, and at present, drug resistant tuberculosis. For several decades we have been at the target end of missile shots from Vandenberg Air Force Base as well as other launch sites in the American arsenal, and have witnessed the occasional mismarks which have resulted in damages to our lands and waters. We have been subject to blatant discrimination in our own country in areas of employment, education, health care and even transportation both in the air and on the sea. But we have not wavered in our support for the continued close relationship between our people and the American people.

We are criticized as being selfish for refusing to abandon our homelands for the greater good of the country and for the satisfaction of its international obligations. But any member of this committee and anyone who has ever visited Kwajalein can attest to the fact that the living conditions in Ebeye and other labor support residential islands in the Kwajalein Atoll, are universally unacceptable in this day and age.

This substandard way of life can and does instill a sense of despair and helplessness which cannot be conducive to a long, productive and mutually beneficial relationship. Anyone who has seen Ebeye as it is today will find it unbelievable that responsible leaders can agree to continue this intolerable status quo for another 70 years. That is the dilemma of Kwajalein. While there is overwhelming willingness to meet the land needs of our American friends, the demands of this sacrifice far outweigh our responsibilities to our future generations.

When, in 2003, the Government of the Marshall Islands entered into agreements now known in aggregate as the Compact of Free Association, as amended, or more commonly Compact 2, a new Military and Operating Rights Agreement (MUORA) was concluded which neglected to address conclusively the issue of a prerequisite Land Use Agreement (LUA) for Kwajalein beyond 2016. There are no public lands in the Marshall Islands and all land required for public use must be acquired through leases and other instruments of conveyance. Many factors contributed to the rejection of the MUORA and the RMI's lease proposal.

Firstly, the values represented in the 2003 MUORA for Kwajalein land reflected a significant decrease from the 1986 land lease. Without judging the fairness of the original Land Use Agreement, in real dollars, the 1986 rental payments translated into 19.1 million per year in 2003. Therefore, acceptance of the 15 million annually which was offered in 2003 would mean accepting less for the same land. Further, the MUORA contemplated less than full inflation adjustment for the payments thus the people of Kwajalein were being asked to enter an agreement where their land would continue to devalue annually for 70 years. Such an arrangement was to them patently unfair and unjust.

Secondly, in the negotiations leading up to the acceptance of Compact 2, full faith and credit was removed from the agreement so that there were no credible assurances that payments in the agreement would withstand the test of a 70 year time period. The RMI has neither the resources nor the authority to guarantee these payments, and if the US was not going to do the same, then the people of Kwajalein were being put at future risk pertaining to payments due them under the agreement.

Additionally, of major concern to the people of Kwajalein are the ongoing activities of the military there and the environmental damage these activities have on the land and surrounding seas. Based on other military use experiences in the Marshall Islands, to say we have good reason to be concerned would be an understatement.

The detonation of 67 nuclear bombs, euphemistically called devices, in our islands, caused permanent destruction of homelands. Compensation for severe bodily injury as well as devastating land damages have been refused, even where proper adjudication and reliable assessments were made. The current attempts to force repatriation of Rongelap Atoll is a scandal that underscores this continuing concern.

The people of Kwajalein had asked during the negotiations that provisions be made for the constant monitoring of land damage and that, where applicable, remediation for damages immediately undertaken. We requested this provision to ensure that corrective action would be taken during the course of the lease and not at the end of the period when some damages would not be repairable. This concern was also rejected by the negotiators for the RMI and the United States Government leaving the people of Kwajalein without effective and enforceable protection. We are aware of current severe contamination of land and water but no funds are available to address these issues today. For example, the fish in the harbor of the once pristine lagoon anchorage at Kwajalein Island has now been declared unfit for human consumption due to severe heavy metal contamination. Depleted uranium from incoming warheads, impact damage, as well as perchlorate contamination from rocket launches are a continuing source of environmental degradation which must be considered in any meaningful environmental regime.

The funds set aside for Ebeye special needs under the Compact would have gone a long way to help ease the suffering of the inhabitants there but instead of using these to supplement other resources for education and health, these funds have been used as a substitute for normal governmental and Compact appropriations for these public services in Kwajalein. As a result, the people of Kwajalein have had to forego their proper, prorated share of RMI General Fund revenues and regular Compact funds and dedicate the entire Ebeye Special Needs (MUORA) funding to provide service constitutionally mandated to be the responsibility of the RMI government. But as members of the Committee know, the RMI does not have full authority over Compact funds but must submit to the authority of the Joint Economic Management and Financial Accountability Committee (JEMFAC) which disburses these funds.

Because of this, any hope of meaningful development must be addressed by what, under the MUORA, are called Compact Impact Funds, approximately 2 million dollars per annum. But yet another Compact related issue precludes the meaningful use of these funds for development. Under the 1986 Land Use Agreement, these funds were to be used by a development authority established by the people of Kwajalein for that purpose. However, in recent times, the United States government has taken the position that Kwajalein cannot establish a development authority because for some strange reason, such an Authority would be incompatible with the Financial Management Agreement under the Compact, and also that these funds cannot be used for administrative costs. We have tried to obtain an explanation as to these inconsistencies but have not received satisfactory responses from the American authorities in Majuro.

We understood, Mr. Chairman, the reluctance of the previous administration to revisit the Compact issue at least, as regards to Kwajalein. After all, they claim, they negotiated in good faith, and gained a valid agreement accordingly. However, no one seems to want to admit that the defect in the amended Compact, namely that a prerequisite land use agreement had not been reached, rendered it, at best a legally insufficient commitment, and at worst a direct violation of the Constitution of the RMI which basically acknowledges that the Government has no land to give. Rather than acknowledging this error, the past administration of the United States, and two different administrations of the government of the

RMI have claimed they had a legally binding agreement between the countries and that they would hold the people of Kwajalein hostage to that agreement. If concluding a land use agreement was strictly an internal matter for the RMI then Section 104 (B) (5) of the Compact Act would not have been inserted by Congress. This provision contemplates the failure to reach an agreement and requires the President to report to Congress "on the intentions of the United States with respect to the use of Kwajalein," in such eventuality.

There was an unsuccessful effort to incentivize the people of Kwajalein to sign a new Land Use Agreement over their very clear and proclaimed objections. An escrow account was established into which would be paid about 4 million dollars a year, the basic difference between Compact 1 land use rentals and the Compact 2 proposed rate . This fund has now reached approximately 25 million dollars and has been often cited as reason enough for the people of Kwajalein to back down on their objections, surrender, and sign a new Land Use Agreement. Our elders have time and again warned that this fund would serve to divide and conquer, to entice some to abandon the firmly held position that the proposed Land Use Agreement under Compact 2 is unfair and unjust. This situation is reminiscent of the infamous 1964 lease negotiations for Kwajalein where a mailbag containing $750,000 in small bills was dumped in the Base Chapel as incentive for the gathered elders to sign that document. That 99 year lease was subsequently discarded as coerced and patently unfair and replaced by the current Land Use Agreement. Mr. Chairman, our stand has always been that we must not agree to something that we view as fundamentally unfair in order to gain immediate financial relief and gratification at the expense of our children and grandchildren, the life of our land. We too have witnessed the tragedy of our nuclear affected communities and cannot in good conscience offer our consent to an arrangement that will in time result in similar tragic abandonment of commitment and breaking of promises.

Mr. Chairman, for the past few days our small Kwajalein delegation has, through the good offices of our President Jurelang Zedekaia and the RMI Embassy in Washington, made the rounds of this great city visiting friends and making new ones in both Congress and the Administration. We have been no less diligent in our efforts to seek solutions to this remarkable impasse. We came quite uncertain of the outcome but intent on letting the new administration here in America know of the widely held position of the people of Kwajalein, namely, that an extension of our relationship is essential to our survival. But the alternative could not be dismissed, for our forefathers and their generations were able to survive and thrive on these small unimposing islands through the sweat of their brows, and the natural bonds uniting them, their land and the sea which protected and sustained them. But, Mr. Chairman, we believe that if there ever was a time when we can in fact break this Kwajalein deadlock, this is it.

Both the United States and the Marshall Islands have undergone changes in their governments in accordance with their respective constitutional processes. One of our more productive meetings during this visit to Washington was in the Department of State with Assistant Secretary Kurt Campbell and the officials of the Bureau of Pacific and East Asian Affairs. We are most grateful that our meeting with Secretary Campbell has opened doors and presented opportunities which we are confident will serve to pave the way for the execution of a new Land Use Agreement for Kwajalein. This will not be an easy task, but we are prepared to meet those challenges and work hard to put an LUA in place by October.

Please let me explain very briefly some of the specifics of this pathway we have explored with Secretary Campbell:

First, the Compact of Free Association contains provisions for specific loans and grants to be made to the RMI for the needs of Kwajalein infrastructure and development based on a plan devised for that purpose. (Sec. 103 5). While this section is contained in both Compact 1 and Compact 2, it has never been tapped as far as we know, for development purposes ever since the Compact came into effect. There is no known procedure or process for triggering this form of assistance but this may very well form the basis upon which infrastructural financing shortfalls for Kwajalein can be obtained. Housing and public facilities especially for the displaced people of Kwajalein are of immediate and critical need.

Secondly, shifts within the amounts set aside in the MUORA can be made to accommodate basic infrastructure requirements and related shortfalls while allowing other Compact funds to finance the requirements of recurring accounts in health and education. Additionally, non-Compact funds may be available to address these critical needs. An agreement between the two governments can put this into effect without any amendment to the Compact.

Three, restoring full faith and credit to Kwajalein funding under the Compact would provide tenable guarantees that these funds will be made available regardless of changes in Governments in the future, and restore flexibility in the undertaking of major development programs for the atoll. Most importantly it will remove the uncertainties and anxieties which undermine confidence in an agreement of such a long duration.

Mr. Chairman, we can also explore further the possibility of an integrated power and water system for the atoll that would allow for the capitalization of new utility and infrastructure schemes, such as sustainable solar, wind, and ocean thermal energy conversion programs. There are resources and special funds already in place which can be tapped for this exercise. This will necessitate expansion of eligibility so that Kwajalein and the RMI can utilize these opportunities to modernize the basic infrastructure for economic and social stability. Power purchase agreements between the U. S. Army and the civilian public utilities in Kwajalein can result in the long term private funding of state of the art electrical and water facilities. This can also open possibilities for meaningful development of export products and earn sustainable economic development for the RMI as well as for its neighboring Pacific States.

Roads and bridges are needed to alleviate the public inconvenience of water ferries, the operation of which will be prohibitively expensive. If this relationship is to last 70 years, then the integration of the community is needed to correct the disparities which prevent closer and more harmonious relationship between the military, the scientific non indigenous residents, and the people of Kwajalein. Communities throughout the 70 mile atoll must have well built and maintained docks, warehouses, and airport facilities in order to enhance the limited living areas within the outer fringes of the atoll. Schools and medical facilities must also be provided.

We think that these ideas can be the basis upon which we can resolve this impasse, Mr. Chairman, and based on our very productive meeting with Secretary Kurt Campbell, Deputy Assistant Secretary Frankie Reed, U.S Ambassador to the Marshall Islands, Martha Campbell, and key staff and advisors of these distinguished officials, we believe our counterparts in the United States Government are similarly convinced. The RMI and the people of Kwajalein alone cannot accomplish these important development programs without the cooperation and support of our most important partner in development, the United States of America. We believe Mr. Campbell's approach to be the most sensible way to reach agreement that will be acceptable to all parties, the Unites States, the RMI, and the people of Kwajalein.

What are the alternatives to this fresh approach to resolve the dilemma that has been Kwajalein for decades? Without changes described above, one option that is available to the RMI is to initiate eminent domain proceedings and condemn our homeland under the provisions of our Constitution. But in the Marshall Islands, and especially in Kwajalein, this may be near to impossible.

Mr. Chairman, during the process of writing and debating our Constitution, and with the expert advice of such stellar legal minds as Professor Quentin Baxter and Mrs. Allison Baxter of New Zealand, as well as America's own Professor Lawrence Tribe of Harvard University, the people of the Marshall Islands sought to define the governmental privilege of eminent domain in such a manner that it would be almost impossible to exercise. This was by done quite by design. For over a hundred years, our country had been under the colonial rule of one nation or another and the practice of taking land from our people was always perceived with suspicion and in some cases outright repugnance. The destruction of our islands from the nuclear testing program remained fresh in the minds of our delegates and as a result, the Constitutional provisions for the exercise of eminent domain are quite restrictive and narrowly defined. Basically, the definition of public use versus economic use must be irrefutably established, and secondly, a clear and definitive assessment of value must be completed. But yet another requirement must be met. That is, land substantively similar to that which is condemned must be provided to substitute for that which is taken, and ceded to the dispossessed. As hard as we have thought this over, we fail to find land which matches the size of Kwajalein, the largest atoll in the world, to replace it should it ever be taken successfully in eminent domain proceedings. It is also generally agreed that the value which would be assigned to Kwajalein in new land condemnation proceedings will most likely exceed the value assigned in 1986. Keeping in mind that land use rentals proposed under Compact 2 are of less value in real dollars than those in 1986, one can only conclude that eminent domain proceedings will be an exercise in futility and clearly one the Government of the Marshall Islands cannot afford without substantial financial subsidy from outside sources. The cost of time delays has not been taken into account.

What then is the remaining option? In spite of all good faith, and the desire of the people of Kwajalein to be accommodating to our best friend and closest ally in the world, closure of the base and withdrawal of military forces from Kwajalein would seem to be the only choice left. It takes a minimum of seven years to restore, replant and resettle atoll lands which have not had the benefit of human care for decades. If 2016 marks the end of the Land Use Agreement, then preparations for that option must begin now. Careful disposition and relocation of property must necessarily be part of a civilized, well organized plan. Mr. Chairman, we do not wish to sound impudent in making that observation for we truly have tried hard to resolve our differences. But where resolution cannot be found, then as friends, we should do what is right.

Mr. Chairman, our elders sent us to Washington this week to share these troublesome facts with you but also to allow for a final attempt at finding a solution to the impasse of Kwajalein. We have, since we arrived, tried to carry out that mandate. We are convinced that it is now or never. Good men and women, negotiating in good faith for the mutual benefit of the countries we represent, can find solutions to this. But stonewalling is not one of those solutions. Adherence to the principles that led us to this standoff in the first place will not result in an honorable agreement. In the Marshall Islands land is scarce and precious. The land use agreement proposed thus far is unjust and unbalanced, and cannot withstand the test of time. And seventy years is very long time.

Our hopes now rest in the spirit of cooperation and understanding we were able to derive from our discussions with Asst. Secretary Kurt Campbell and other high officials of your government. Our President was able to meet with Secretary of State Hillary Clinton, and other distinguished members of the Obama Administration as well as our good friends in Congress. We believe we have found a way to conclude a lasting agreement and will strive to accomplish that at the earliest possible time. And with your support and guidance, yes, we can.

Mr. Chairman, we thank you for this special opportunity and we submit with this statement a number of documents we hope will help our friends in Congress understand our predicament. The solution can be found when and only when the Government of the United States, the Government of the Marshall Islands, and the people of Kwajalein bring to bear all that is in their sense of fairness and wisdom to resolve this matter once and for all. Together.

May God bless the United States of America. May God bless your friends, the people of Kwajalein, and the Republic of the Marshall Islands.

Thank you, Mr. Chairman.

STATEMENT OF SENATOR TOMAKI JUDA
KILI/BIKINI/EJIT LOCAL GOVERNMENT COUNCIL
BEFORE THE HOUSE FOREIGN AFFAIRS SUBCOMMITTEE ON ASIA, THE PACIFIC AND THE GLOBAL ENVIRONMENT

May 20, 2010

Thank you, Mr. Chairman. I am Senator Tomaki Juda, and I am pleased to be here today before you. I remember very well when you came to the Marshall Islands two years ago to meet with so many of us to hear our stories.

You know the story of the Bikini people better than any member of Congress, and I want to thank you for all your efforts for the people over the years.

Let me introduce our delegation. With me today are Mayor Alson Kelen, Council members Urantha Jibas and Typhoon Jamore, our liaison Jack Niedenthal, and our legal counsel, Jonathan Weisgall. I would now like to ask Mayor Alson Kelen to say a few words.

Thank you.

STATEMENT OF MAYOR ALSON KELEN
KILI/BIKINI/EJIT LOCAL GOVERNMENT COUNCIL
BEFORE THE HOUSE FOREIGN AFFAIRS SUBCOMMITTEE ON ASIA, THE PACIFIC AND THE GLOBAL ENVIRONMENT

May 20, 2010

Thank you, Mr. Chairman. I am Alson Kelen, and I have been the mayor of the Kili/Bikini/Ejit Local Government Council since 2009.

Although I was not born on Bikini, I lived there for several years as a little boy in the 1970s until my family was evacuated in 1979. For my generation, as for my elders, Bikini still represents our Promised Land – our homeland – the place where we belong – ourselves, our elders, and our children.

What I want to discuss with you today is the USDA food program for the four atolls. Our written statement covers this in detail, but here are the key points:

- This program was in place for many years before the Compact came into effect in the 1980s.
- The first Compact Act continued the program and said Congress will consider "additional funding for these programs as may be necessary."
- The program was continued in 2003 when the Compact was extended, and Congress added language directing the U.S. to make sure that the program keeps up with changes in the population of the four atolls.
- The problem is obvious: Our populations have increased significantly over the years, but the size of the USDA program hasn't.
- The combination of the radiation problems in the soils of the four atolls and the recent decline in the value of our trust funds makes our food problems even more serious.
- Your oversight in making sure this happens would be greatly appreciated.

You have helped in the past, and we know you will do whatever you can now.

Thank you.

Testimony of Bill Graham
Public Advocate (retired), Marshall Islands Nuclear Claims Tribunal
Before the House Committee on Foreign Affairs
Subcommittee on Asia, the Pacific, and the Global Environment
May 20, 2010

Thank you, Mr. Chairman, for holding this hearing and for recognizing that many nuclear issues remain unresolved for the people of the Republic of the Marshall Islands (RMI). As the Public Advocate at the Nuclear Claims Tribunal from its establishment in 1988 until last July, I directed the office which advised and assisted people to prepare, file, and present their claims before the Tribunal. I regret that I am unable to appear before you in person today and I appreciate the opportunity to submit this written testimony providing an overview of the Tribunal's work and of the current sad state of nuclear claims in the Marshall Islands.

Personal Injury Compensation

General parameters for the operation of the Claims Tribunal are described in Article IV, Claims Adjudication Process, of the Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact of Free Association (177 Agreement). Article IV Section 3, Governing Law, provides that "In determining any legal issue, the Claims Tribunal may have reference to the laws of the Marshall Islands, including traditional law, to international law and, in the absence of domestic or international law, to the laws of the United States."

The Marshall Islands law establishing the Tribunal provides that "In order to facilitate efficient and uniform payments of compensation, the Tribunal shall issue regulations establishing a list of medical conditions which are irrebuttably presumed to be the result of the Nuclear Testing Program." However, when the Tribunal initially sought advice as to which medical conditions might be presumed to result from radiation exposure, various experts recommended against such an approach, suggesting instead that a "probability of causation" analysis be adopted to determine if a condition suffered by a particular individual was more likely than not caused by radiation from the testing program.

Such an approach requires an individual radiation dose reconstruction but the Tribunal soon realized that there was simply insufficient information about exposure levels in the Marshall Islands to support making more than a handful of individual dose estimates with a reasonable level of precision. There was no monitoring of radiation exposures of the population living in the Marshall Islands during the testing period and virtually no effort to estimate the doses they had received until after the Bravo test, the most powerful nuclear device ever detonated by the U.S., sent radioactive fallout across major portions of this atoll nation beginning on March 1, 1954, and forced evacuation of the people from Rongelap, Ailinginae and Utrik.

But it was not just the Bravo test that caused contamination and not just Rongelap, Ailinginae and Utrik where fallout occurred. At a hearing before the House Committee on Natural Resources on February 24, 1994, Dr. Edward P. Radford testified about an experience he had as an Air Force radiological safety officer on Kwajalein in 1948 during Operation Sandstone, a series consisting of three tests carried out at Enewetak atoll:

> "...we did have fallout on Kwajalein after the second (and largest) of the three tests.

> About 14 hours after the test, rain began falling on Kwajalein and our unit of radiation safety officers, about 25 men, was ordered to take our Geiger counters and measure the radioactivity coming down in the rain. We were assigned different areas to monitor and proceeded for the next two or three hours to take readings in the rain on the ground, on tent surfaces, and on any other surfaces present. My experience was that the count rates were high, much greater than background. Both gamma and beta radiation was measured; the beta radiation showed it was fresh fallout. We turned in our results to our commander, but at that time there was no further comment that I can recall about the significance of this "rainout..."
>
> "In 1983, a report prepared by Science Applications International Corporation reviewed the radiation exposures of the 7,000 Naval personnel taking part in Operation Sandstone in 1948. A single measurement of gamma radiation (only) from fallout recorded for Kwajalein (presumably from our survey) at about midnight on May 1, the date of the second (YOKE) test, was higher than any of the greater number of measurements made at Enewetak during the tests. There is little comment in the report about gamma measurements. The highest integrated gamma dose measurements to personnel through May 31 were recorded for Kwajalein residents. These were higher than the Enewetak values and those for people on ships which remained in the Enewetak lagoon during all the tests. No comment is made about the fact that the fallout on Kwajalein was 400 miles away from the test and that fallout on other islands could have been higher than on Kwajalein. The distinct impression is that radiation exposure estimates in this report were determined solely by where measurements were available."

Measurements were not made on those "other islands" where Marshallese lived, even when larger tests were detonated. At 49 kilotons of explosive yield, Yoke was one of the smaller tests conducted in the Marshall Islands, almost insignificant compared to the 18 separate megaton level bombs that would be exploded in the later series of tests. But both during and since the testing program, there was little or no effort to compile exposure data on the people of the Marshall Islands.

In his 1994 testimony, Dr. Radford also said, "I strongly suspect that radioactive fallout from the many American atomic and thermonuclear bombs detonated at Enewetak and Bikini atolls up to 1958 had caused exposure of many Marshallese to significant radiation doses. It will be difficult to establish objective evidence of this exposure..."

Even these many year later, Dr. Radford's concluding remarks at that hearing still have a chilling effect:

> "When Operation Sandstone of Joint Task Force Seven left the Pacific and returned home, eventually all members of the Task Force were sent a book containing a photographic history of the bomb tests. This book still brings back many memories to me. On the last page of the book, opposite a color picture of a fireball rising above an Enewetak island, is the following text: "The atomic energy Proving Ground at Eniwetok lies ready and waiting for man's next adventure in atomic wonderland." It may have been a wonderland for nuclear physicists, but for the Marshall Islanders it was part of their home, and the bomb tests were not a wonderland but became a place of fear and danger."

During 1989, the Tribunal became aware of legislation enacted by the U.S. Congress with regard to compensation of radiation-exposed veterans. With certain minor restrictions, the Radiation-Exposed Veterans Compensation Act of 1988 (PL 100-321) provided a "presumption of service connection" for 13 specified diseases. The report of the House Veterans' Affairs Committee in support of that legislation noted that "It has become apparent that such evidence will never be available in the cases of veterans covered under the provisions of the reported bill because the level of exposure cannot be verified."

In addition, the Tribunal was fortunate enough to secure the services of Dr. Robert W. Miller to advise on diseases known to be related to radiation exposure. Dr. Miller had been a pioneer in the field of epidemiological research at the Atomic Bomb Casualty Commission/Radiation Effects Research Foundation in Hiroshima in the 1950s and was appointed the first Chief of Epidemiology at the National Cancer Institute (NCI) when he returned to the U.S. in 1961.[1] He held the position of Chief of Clinical Epidemiology at NCI when he traveled to Majuro in December 1989 to consult in person with the Tribunal judges and officers.

Dr. Miller was well aware of the law providing benefits on a presumptive basis to atomic veterans diagnosed with a listed medical condition and he informed the Tribunal that legislation was at that time being considered by Congress to compensate civilians who lived downwind from the Nevada Test Site, also on a presumptive basis for the same 13 medical conditions.

Given the provision in the 177 Agreement that the Tribunal have reference to the laws of the United States, and the acceptance by the U.S. of the responsibility for compensation owing to the citizens of the Marshall Islands for loss or damage to property or person resulting from the nuclear testing program (in Section 177(a) of the Compact), the Tribunal determined that Marshallese claimants should be given no less benefit of the doubt than that extended to U.S. citizens who were also affected by their government's atomic testing.

Accordingly, the Tribunal advised Dr. Miller that it intended to implement a compensation program similar to the U.S. presumptive programs and to adopt the 13 conditions on the Congressional list as presumed to be the result of the nuclear testing program. With that understanding, he presented an additional list of 10 conditions known to be induced by radiation and recommended that both lists apply to Marshallese who were living in the islands during the 1946-1958 testing period, including those *in utero* at the ending date. In January 1990, the Tribunal adopted regulations establishing an initial list of 23 presumed conditions and began the task of setting compensation amounts for each.

The Tribunal's initial efforts to establish amounts of compensation for personal injuries took into consideration the compensation given to exposed Marshall Islanders who had been taken to the U.S. for medical care beginning in the 1960s. Under U.S. Public Law 95-134, lump sum payments of $25,000 were made to many individuals for radiation-related illnesses, including those who had partial thyroidectomies for non-malignant thyroid nodules. Under the same law, a "compassionate payment" was made in the amount of $100,000 to any individual who expired from a radiation-related malignancy such as leukemia.

When the Radiation Exposure Compensation Act (RECA) was enacted as Public Law 101-426 in 1990, another benchmark was established. In that law, Congress found that fallout emitted from the atmospheric nuclear tests at the Nevada Test Site exposed people "to radiation that is presumed to have generated an excess of cancers among those individuals" and provided that a lump sum compensation payment in the amount of $50,000 be made for specified radiogenic diseases contracted by people who were physically present in an "affected area" during the periods of atmospheric testing in Nevada. The affected areas include points 450 miles or more from the Nevada Test Site.

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[1] Dr. Miller's death was mourned by a colleague in an article published in the 2006 issue of RERF Update, accessible at http://www.rerf.or.jp/library/update/pdf/2006vol17.pdf

In deciding on the amounts of compensation, the Tribunal was also guided by the degree to which a particular illness generally affects the quality of a person's life, including the degree to which it is life-threatening. As its starting point, the Tribunal used the $50,000 paid under RECA for a thyroid cancer and scaled the awards for other conditions up or down from that amount based on whether they were considered more serious. For example, a usually fatal leukemia or stomach cancer was awarded $125,000 while the amount for a benign thyroid nodule not requiring surgery was set at $12,500.

Another factor acknowledged by the Tribunal was the pro-rata nature of the payment of its awards, as required under the 177 Agreement, and the likelihood that full payment the awards will never be made. That has in fact been the case as even those who were among the first to be awarded compensation and who received an initial payment of 20% of their awards in August or September 1991 and annual pro-rata payments in varying percentages every October from 1991-2005 have been paid only 91% of their net compensation.

In July 1991, the Tribunal amended the personal injury regulations it had adopted the previous year, adding salivary gland tumors to the list, making acute radiation sickness and beta burns separate conditions, and including the amounts of compensation for each condition. The next month, it began to approve awards and make initial payments to people who had been physically present in the Marshall Islands during the testing period and who had been medically diagnosed as having one of the 25 listed medical conditions.

Following initial establishment of its program, the Tribunal conducted several extensive reviews of the latest scientific and medical research about the effects of radiation on human beings. Those efforts benefitted greatly from the recommendations and expert opinions of the aforementioned Dr. Edward Radford.[2] Dr. Radford was Chairman of the National Academy of Sciences Advisory Committee on Biological Effects of Ionizing Radiation (BEIR III) from 1978-80, was a member of the original BEIR I committee from 1970-72, and served as a Visiting Scientist at the Radiation Effects Research Foundation in Hiroshima, Japan, from 1983-84.

Based on those reviews, two additions were made to the Tribunal's list of presumed medical conditions in 1993, seven more conditions were added in 1996, one in 1998, and one more in 2003. The current list includes 36 conditions.

The similarities between the Downwinders and the Marshall Islands situations provided justification for adoption of the presumptive approach by the Tribunal. In both cases, the affected populations were unknowing victims of radioactive fallout from the testing program. In both cases, there was little effort made to monitor exposures to the population at large. And although the Marshall Islands is geographically somewhat larger than the area covered by the Downwinders program, the total yield of the nuclear tests in the Marshall Islands was almost 100 times greater than at Nevada.

The levels of radiation exposure at every atoll in the Marshall Islands were also higher than the average of the six counties closest to the Nevada test site, as explained in an attachment to the statement submitted to this Subcommittee in July 2007 by then Tribunal Chairman James Plasman.

In addition, the U.S. Centers for Disease Control and Prevention (CDC) released two reports during 2007 which discuss estimated radiation doses from the testing program.[3] One of those reports provides a comprehensive review of the original human specimen data and the exposure models that were used to derive previous thyroid dose estimates, revealing multiple errors and strongly suggesting that those doses are likely to have been substantially underestimated. Thyroid conditions account for more than half of the personal injury awards made by the Tribunal.

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[2] Informative obituaries for Dr. Radford are accessible at http://www.nytimes.com/2001/10/22/world/edward-radford-79-scholar-of-the-risks-from-radiation.html and http://www.independent.co.uk/news/obituaries/dr-edward-radford-755392.html

Under the RECA program, more than 22,000 claims have been approved and nearly $1.5 billion paid.[4] Compensation is also awarded on a presumptive basis, without the completion of a radiation dose reconstruction or determination of the probability of causation, to members of Special Exposure Cohorts established under the Energy Employees Occupational Illness and Exposure Act. There are currently 46 sites for which at least some workers have Special Exposure Cohort status and are entitled to $150,000 in compensation and payment of medical expenses. More than 10,000 Special Exposure Cohort cases have been accepted and more than $1.5 billion in compensation paid.[5]

As of December 31, 2008, the Tribunal had made personal injury awards to or on behalf of 2,127 individuals totaling $96,658,250 in compensation. Only $73,526,698 of that total was actually paid, leaving a balance owed of $23,131,552. No awards have been made since that time.

Many more personal injury awards would have been made by the Tribunal had adequate medical diagnostic services been available in the Marshall Islands. In fact, the absence of any diagnosis was the norm for most people throughout the period of nuclear testing in the Marshall Islands. The 1958 population census indicates that two-thirds of the people (9,464 of the total of 14,163) lived in the outer islands where the diagnostic equipment available to the local health aide generally consisted of a stethoscope and a thermometer. Even at the Majuro and Ebeye hospitals, the diagnostic equipment and laboratory facilities were very basic for all of the testing period and throughout virtually all of the trusteeship era.

From 1990-1993, the Tribunal coordinated the work of a small team of medical doctors who conducted clinics throughout the Marshall Islands for the primary purpose of examining and diagnosing conditions in individuals with personal injury claims. Without their dedicated efforts, many hundreds of outer island claimants would have no medical diagnosis of their conditions.

Still, there are literally hundreds of claimants and deceased individuals claimed by their relatives for whom the summary diagnosis is "cancer of unknown primary," insufficient evidence for an award of compensation from the Tribunal. In addition, missing documentation of diagnoses which were made is a common situation, especially for deceased people. Many medical records for Marshall Islanders were destroyed in a fire at the old hospital and others were destroyed when the move was made to the current facility.

The more one understands about the realities of the personal injuries suffered by Marshallese as a result of the nuclear testing program, the more difficult it is to accept the unpaid awards as a fair and just outcome.

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[3] Both reports were prepared by S. Cohen & Associates, an independent firm that has provided scientific expertise to claimants before the Tribunal since 1998. The reports are titled "Historical Dose Estimates to the GI Tract of Marshall Islanders Exposed to BRAVO Fallout" and "An Assessment of Thyroid Dose Models Used for Dose Reconstruction."

[4] See Claims to Date Summary at http://www.justice.gov/civil/omp/omi/Tre_SysClaimsToDateSum.pdf

[5] See EEOICP Statistics at http://www.dol.gov/owcp/energy/regs/compliance/weeklystats.htm#1

Property Damage

The first major step in the Tribunal's consideration of property damage claims was to establish a radiation protection standard to be applied in determining the extent of radiological cleanup and restoration required. To address the many complex issues involved in making such determinations, the Tribunal conducted adversarial proceedings which included formal hearings and the taking of detailed testimony and recommendations from various recognized expert witnesses.

That process was concluded in late 1998 based on relevant precedents in international and U.S. law. At that time, the Tribunal formally adopted policies and criteria established by the International Atomic Energy Agency (IAEA) and the U.S. Environmental Protection Agency (EPA) as the basis for its restoration and remediation standard. An IAEA safety series publication recommended that "As a basic principle, policies and criteria for radiation protection of populations outside national borders from releases of radioactive substances should be at least as stringent as those for the population within the country of release."[6] In the U.S., the EPA defines that protection level to be no more than a 15 millirem per year (mrem/yr) maximum effective dose equivalent for humans.[7]

Comprehensive adjudicatory proceedings then commenced before the Tribunal on the claims for property damage in the four atolls most obviously affected by the nuclear testing program. In those proceedings, the Tribunal relied both on the Act establishing it and upon U.S. legal authorities, employing standard hearing procedures and methodologies generally used in American courts for property damage cases.

The first of those claims was decided in 2000 when the Tribunal awarded $385,894,500 million in net compensation to the People of Enewetak for three major types of damage: $107,810,000 for radiological cleanup and restoration; $244 million for past and future loss of use of the atoll; and $34,084,500 for consequential damages including hardship and suffering.

A decision in 2001 awarded $563,315,500 to the People of Bikini in the following amounts and categories of damage: $251,500,000 for restoration and radiological cleanup; $278,000,000 for past and future loss of use of Bikini Atoll; and $33,815,500 for the hardships suffered by the People of Bikini as a result of their relocation attendant to their loss of use.

Partial payments were made on those awards in 2002 and 2003 totaling $1.6 million for Enewetak and nearly $2.3 million for Bikini.

In December 2006, the Tribunal awarded compensation in the amount of $307,356,398.91 in the class action claim for property damage at Utrik and Taka atolls. That amount included $5 million for a potassium treatment program to reduce the levels of radioactive cesium in the food chain by blocking its uptake by local plants; $257,060,898.91 for impaired property use as a result of radioactive contamination; and $45,295,500 for consequential damages including emotional distress and mental suffering.

In a decision issued in April 2007, the Tribunal awarded $1,031,231,200 for property damages in Rongelap, Rongerik and Ailinginae atolls. That total included $212 million for radiological cleanup and restoration; $784.5 million for past and future loss of use of the three atolls; and $34,731,200 for a variety of consequential damages including $125,000 for medical experimentation conducted on 10 individuals. In April 2008, that decision was amended to increase the awards for medical experimentation by $237,500 to reflect the involvement of 19 additional subjects.

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[6] Safety Series No. 67, Assigning a Value to Transboundary Radiation Exposure, IAEA 1985

[7] EPA memo dated Aug 22 1997 entitled "Establishment of Cleanup Levels for CERCLA Sites with Radioactive Contamination"

No payments have been made on either of the Utrik or Rongelap awards.

Because the Tribunal awards for property damage include provision for post-judgment interest on the loss of use and restoration amounts, it is not possible to state precisely the current balances due on those awards. The simplest way to state the total balance owed on property damage awards is "$2,284,108,436, plus interest due from the dates of the respective awards." For the record, that total is derived as follows:

Enewetak	$ 384,247,017.35	($385,894,500 original total less $1,647,482.65 in payments)
Bikini	561,036,320.17	($563,315,500 original total less $2,279,179.83 in payments)
Utrik	307,356,398.91	(original net total)
Rongelap	1,031,468,700.00	($1,031,231,200 original total plus $237,500 April 2008 amendment)
	$2,284,108,436.43	

The decisions of the Tribunal in each of the four property damage claims described above can be accessed at http://www.nuclearclaimstribunal.com/award.htm.

In those decisions, the Tribunal awarded a net total of $531.3 million for cleanup of residual radioactive contamination and soil remediation in those atolls to ensure the same level of safety that would be required in the U.S. That amount is above and beyond what the U.S. has already done in the way of cleanup and reflects deductions made by the Tribunal for the full amounts of the various resettlement trust funds provided by the U.S. for those atolls.

The awards made for cleanup of residual radioactive contamination were based on standard U.S. methodology for selecting remedial and disposal actions from a variety of alternatives. For example, at Enewetak, rather than remove all soil with radiation levels which could produce doses in excess of 15 mrem/yr and dispose of it in a crater with dome, at an estimated cost of $947 million, the Tribunal opted for an approach involving treatment of many areas with potassium, reducing the volume of soil to be removed and using that soil as fill material for a causeway connecting the two main residential islands, at a total cost of $103.3 million. Similarly, the strategies considered for Bikini were estimated to cost from $217 million to $1.4 billion but only $251.5 million was awarded, based on using the same cleanup method recommended by the U.S. Department of Energy's environmental contractor, Lawrence Livermore National Laboratory.

The property damage awards made by the Tribunal are a testament to the past and present levels of radioactive contamination and denied use of the homelands of these atolls' people. The inability of the Fund to support payment of these awards is regarded by the Tribunal as evidence of the manifest inadequacy of the settlement under the Section 177 Agreement for damages to the people of the Marshall Islands resulting from the U.S. Nuclear Testing Program. Fairness and justice demand that this situation not be ignored.

Medical Experimentation

One of the consequential damages for which the Tribunal awarded compensation in the property claims for Rongelap, Ailinginae and Rongerik atolls was medical experimentation, a type of award which the Tribunal had not made previously. Two human studies were specifically recognized, one involving the chelating agent EDTA and the other the radioactive tracer Chromium-51.

These two studies were considered by the President's Advisory Committee on Human Radiation Experiments (ACHRE) which noted in its October 1995 Final Report that they were examples of research "that appear to have been nontherapeutic: this research was intended to learn about radiation effects in this population and offered little or no prospect to benefit to the individual subjects."[8]

However, the Committee stated that "we found no evidence to support the claim that the exposures of the Marshallese, either initially or after resettlement, were motivated by research purposes." In its Conclusions About the Marshallese section, the Final Report states, "The Committee found no evidence that the initial exposure of the Rongelapese or their later relocation constituted a deliberate human experiment. On the contrary, the Committee believes that the AEC had an ethical imperative to take advantage of the unique opportunity posed by the fallout from Bravo to learn as much as possible about radiation effects in humans."

It is difficult to agree with that assessment when one considers the broad program of medical research and experimentation that was conducted on the people who lived during the period from 1957 to 1985 in the radiation laboratory that was Rongelap. As documented in Attachment 1, the decision to return the population to the atoll in 1957 was driven by the need for "greater knowledge of such effects on human beings," by the perspective that "the habitation of these people on the island will afford most valuable ecological data on human beings," and by the knowledge that "various radioisotopes present can be traced from the soil, through the food chain, and into the human beings, where the tissue and organ distribution, biological half-lives, and excretion rates can be studied."

Of course the people wanted to return to their homelands after three years in exile but that was not a desire based on knowledge of the risks involved. And of course the knowledge gained about the effects of radiation in humans is of benefit to science and to the entire world. And certainly it is easier to see and understand the experimental nature of the return in retrospect than it was at the time the decisions were made and put into action.

But none of those facts make the situation any less tragic for those who were the unwitting subjects of that experiment.

The Nuclear Claims Fund

As required under Article I, Section 1 of the 177 Agreement, the Fund was created in late 1986 when the U.S. provided to the Marshall Islands the sum of $150 million. The Fund was to be invested with the performance goal of producing average annual proceeds of at least $18 million for disbursement in accordance with an agreed upon schedule. In the event that annual proceeds were not sufficient to make the required disbursements, the 177 Agreement provided that the corpus of the Fund be used to supplement proceeds in the amount of the difference.

Inherent in the RMI's acceptance of the $150 million settlement as adequate compensation was the its expectation that the Fund would actually achieve the performance goal, providing an $18 million annual annuity "to create and maintain, in perpetuity, a means to address past, present and future consequences of the Nuclear Testing Program,"[Preamble to the 177 Agreement]

Sadly, that expectation was not matched by reality. When the Nuclear Claims Tribunal began its operations in mid-1988, there was serious concern as to whether the Fund would be able to make all of the required distributions before being exhausted. A huge loss in the Fund's value occurred in October 1987, less than one year into its existence and just when it had become fully invested. As a result of the stock market crash that month, the value was reduced to approximately $132 million by the end of 1987. Any thought that the Fund could earn the $18 million per year was gone, replaced by the prospect of routine incursions into the corpus in order to make the required distributions.

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[8] Chapter 12 of the ACHRE Final Report, entitled The Marshallese, is accessible at http://www.hss.energy.gov/healthsafety/ohre/roadmap/achre/chap12_3.html

In September 1992, the U.S. General Accounting Office (GAO) issued a Report to Congressional Requesters addressing the Status of the Nuclear Claims Trust Fund (GAO/NSIAD-92-229). That report stated that "For the trust fund to meet the required disbursements and retain the original $150 million in principal, a 12.5-percent annual return would have been required."

By the end of 1991, the Fund had rebounded to a value of $138 million but that was largely due to the fact that the Tribunal had drawn only about $3.2 million of the $16.5 million in accumulated annual allocations available to it for payment of compensation awards. Given the value at that time, GAO calculated that average annual earnings of 16.4 percent would be required in order to make all payments and restore the Fund value to the original $150 million by the year 2001.

Such a rate of return never materialized, despite the pronouncement of the U.S. government that "the 1987 stock market 'correction'... in no way impairs the long-term performance and viability of the Fund," because it anticipated that those losses "will be fully restored in the near future." [Brief of the United States at 34, 45, *People of Bikini v. United States*, Nos. 88-1206-1207-1208 (Fed. Cir., June 24, 1988)]

Instead, after the first 15-years of its existence and disbursement of the $270 million in required distributions, the Fund stood at less than $44 million in October 2001, a time when more than $30 million was owed on personal injury awards, nothing had been paid on nearly $1 billion of property damage awards, and the health care program was expecting at least the $2 million in annual funding that it had received under the 177 Agreement for each of the previous 15 years. In a 2005 report on Trust Funds in the Pacific, the Asian Development Bank said of the Nuclear Claims Fund, "while it was originally designed as a true trust fund, it effectively has become a sinking fund."[9]

The Fund is presently on the brink of exhaustion with a balance of approximately $71,000.

Some have argued that the Tribunal exceeded the amount of money provided through the Settlement Agreement for awards of compensation. On the contrary, the Section 177 Agreement clearly acknowledges that the amount of money provided for payment of awards was not limited to any particular figure. Article II, Section 7(c) provides that "Commencing on the fifteenth anniversary of the effective date of this Agreement, not less than 75% of Annual Proceeds shall be available for disbursement in whole or partial payment of monetary awards made by the Claims Tribunal."

Sadly, however, due to the inadequacy of the Fund and of its performance, there are virtually no annual proceeds to support such payments. The failure of the Fund to perform as expected is a failure to deliver on a promise.

Conclusion/Recommendations

Marshall Islanders with compensation awards which can never be paid from the Nuclear Claims Fund are entitled to another chance at the justice that the settlement agreement and the Tribunal have not been able to provide to them. Surely no one can consider the present situation to be a fair and just outcome.

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[9] See page 51 at http://www.adb.org/Documents/Reports/ Trust-Funds-Pacific/trust-funds.pdf

An April 2006 report by the Harvard Law Student Advocates for Human Rights entitled "Keeping the Promise" evaluates the continuing U.S. obligations arising out of the nuclear testing program. It concludes that "the promise of 'just and adequate' compensation has not been fulfilled." The report recommends that Congress take actions to address outstanding personal injury and property damage awards and health concerns of nuclear-affected populations.[10]

The Congressional Reference procedure appears to have great potential to address the injustices which remain unresolved. It is understood that the proceedings will be adversarial and that the outcome may not support a recommendation for full payment of the awards made by the Nuclear Claims Tribunal. However, claimants will have the opportunity to submit evidence and present arguments before an impartial and independent forum where a finding of facts and a judicial determination can be made and a fully informed recommendation regarding the merits of their claims provided to Congress so that it can decide how to proceed. That is truly an encouraging prospect which I strongly encourage this Committee to pursue.

In addition, consideration may be given to replenishing to Nuclear Claims Fund. Given that it was expected to produce funds adequate to meet all the required distributions over its first 15 years, while leaving the corpus intact, it wound up more than $106 million short of that goal. That is the amount that had to be taken from the corpus in order to make those distributions, leaving the Fund with a balance of less than $44 million in October 2001.

Consideration may also be given to appropriating the $531 million in additional funding needed to conduct necessary radiological cleanup and restoration activities in the atolls which have property damage awards from the Tribunal totaling that amount.

Again, I thank the Chairman and the Members of this Committee for the opportunity to submit this testimony and for your attention to the many unresolved nuclear issues in the Marshall Islands.

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[10] The report is available online at http://archives.pireport.org/archive/2006/April/MarshallIslandsReport.pdf

Attachment 1

Partial Chronology of Statements, Opinions and Views Relating to the Resettlement of Rongelap Atoll in 1957

Following their exposures to high levels of radioactive fallout from the Bravo thermonuclear bomb test on March 1, 1954, a total of 82 people were evacuated from Rongelap and Ailinginae atolls and moved to Kwajalein atoll where they stayed in emergency quarters on Ebeye for approximately three months. In June 1954, they were moved to a newly constructed village on Ejit Island in Majuro atoll where they lived for three years until they were returned to Rongelap in June 1957.

Although various radiological surveys of the atoll and its biota had been conducted in the 40 months that the people were away, no effort to clean up the radioactive contamination had been made prior to their return.

The following statements, views and opinions have been excerpted from various communications and reports dealing with Rongelap in the 1950s and 1960s. Readers may decide for themselves whether or not the return to their homelands, at that time and under those circumstances, was in the best interests of the people of Rongelap.

10 April 1954 communication to Commander Joint Task Force Seven from Clinton S. Maupin, Colonel, (MC) USA, Staff Surgeon
http://www.hss.energy.gov/healthsafety/ihs/marshall/collection/data/ihp1a/3259_.pdf

> "In view of the fact that this group received a dose of radiation which was marginal from a standpoint of severe morbidity, justification cannot be made for exposure to significant additional radiation. Therefore, based on the concept that the recovery period should correspond in time to the permissible dose for accumulation, it is recommended that these patients not be exposed to radiation except for essential diagnostic or therapeutic radiation for a period of eight years."

21 April 1954 memorandum from Project Officer, Project 4.1 (E. P. Cronkite, CDR MC USN) to Commander, Joint Task Force Seven
http://www.hss.energy.gov/healthsafety/ihs/marshall/collection/data/ihp1b/7576_.pdf

> "The group should be exposed to no further radiation external or internal with the exception of essential diagnostic and therapeutic x-ray for at least 12 years. If allowance is made for unknown effects of surface dose and internal deposition there probably should be no exposure for rest of natural lives."
>
> "They should be located where medical care is easily and quickly available and satisfactory communications exist."
>
> "At 2-4 week intervals urine should be collected for the study of excretion of fission products ... laboratories desire to follow excretion rates indefinitely."
>
> "It is appreciated that the above recommendations virtually prohibit the return of this group to their home atoll. However, it is probable that returning these people, who have already received excessively large exposure, would subject them to radiation levels above the United States AEC peace time maximum permissible doses for both external and internal radiation. This is particularly true since the northern islands of the atoll which are used as farm islands and a source of food supply for the Rongelap people received up to ten times the fall-out

that occurred on Rongelap. These people may live for a month or so per year on the northern islands."

October-November 1955 Radiobiological Resurvey of Rongelap and Ailinginae Atolls, Applied Fisheries Laboratory, University of Washington, Seattle
http://www.hss.energy.gov/healthsafety/ihs/marshall/collection/data/ihp1c/0696_a.pdf

"The highest value ... of any soil sample of the October-November collections, oddly, was found in the top 3 inches of soil from Rongelap Island." (first page of Abstract)

"In general, the levels in the plants were highest at the northern islands of Kabelle and Labaredj. The only exception was the corm of the arrowroot plant in which the Rongelap Island value was almost three times greater than for the other collecting areas. ... It is probable that the arrowroot at Rongelap Island was collected in relatively 'hot' spots. In the early surveys it was found that the meter readings were highest in soil depressions and in pits such as those used by the natives for growing crops, and this may account for the values." (pages 27 and 31)

"The activity in the coconuts does not appear to be declining appreciably with time, but since it is due mostly to Cs-137, it does not present a health problem at this time." (page 32)

"Edible plants other than coconuts have been found to contain levels of Sr-90 which are above the tolerance level as defined in the Radiological Health Handbook. Among these plants are Pandanus, papaya, Morinda, squash, and possibly arrowroot." (page 32)

"In the January 28-30, 1955 collections, the northern Rongelap terns from Gejen, Kabelle and Labaredj Islands were found to contain less radioactive materials per unit weight than did the terns from the southern island of Rongelap. This finding was unexpected because of the fact that the average levels of radioactive contamination were higher in the northern than in the southern islands." (page 42)

"the Rongelap natives usually collect birds at Ailinginae Atoll ... Ailinginae terns contain, on the average, about twice as much radioactivity as the terns from the northern islands of Rongelap Atoll." (page 42)

March 1957 Medical Survey of Rongelap and Utrik People Three Years After Exposure to Radioactive Fallout, Robert A. Conard, M.D. et al, Brookhaven National Laboratory, Concluding Remarks, page 22 (report of examinations carried out in Majuro)
http://www.hss.energy.gov/healthsafety/ihs/marshall/collection/data/ihp1a/4569_.pdf

"The increasingly widespread uses of radioactive sources in research and industry increase the possibility of exposure of people to various forms of ionizing radiation. Therefore, greater knowledge of such effects on human beings is badly needed."

"Considerable research is being carried out on effects of radiation on animals, but there are obvious limitations in extrapolating such data to the human species. Human experimentation, particularly with regard to whole-body radiation effects, is limited to therapeutic use of radiation in diseased people. Though such data are useful, they must be evaluated with caution. The most valuable information about human radiation effects, therefore, has come from people irradiated from atomic bombs such as the Japanese people of Hiroshima and Nagasaki and the Marshallese..."

> "The group of irradiated Marshallese people offers a most valuable source of data on human beings who have sustained injury from all the possible modes of exposure-penetrating radiation, beta radiation of the skin, and internal absorption of radioactive materials. The acute and subacute effects of these different forms of radiation have been well documented and for the most part have subsided."
>
> "Even though, as pointed out, the radioactive contamination of Rongelap Island is considered perfectly safe for human habitation, the levels of activity are higher than those found in other inhabited locations in the world. The habitation of these people on the island will afford most valuable ecological radiation data on human beings..."
>
> "... the various radioisotopes present can be traced from the soil, through the food chain, and into the human beings, where the tissue and organ distribution, biological half-lives, and excretion rates can be studied."
>
> "Several factors favorably influence these studies on the Marshallese. The exposed and unexposed Rongelap people are interrelated and represent a remarkably homogeneous population. They live under the same environmental, sociological, and economic conditions and are likely to remain together as a group indefinitely."

February 13, 1958, Office Memorandum to Dr. A. H. Seymour, Environmental Sciences Branch from Gordon M. Dunning, Chief, Radiation Effects of Weapons Branch
http://www.hss.energy.gov/healthsafety/ihs/marshall/collection/data/ihp1d/400209e.pdf

> "A resurvey of Rongelap Island should have been made prior to the return of the Rongelapese. I strongly recommended this to the Environmental Sciences Branch, but for what I am sure must have been good reasons it was not felt possible to do so."
>
> "After the return of the Rongelapese we were surprised to learn that about ten or so of them had taken up permanent residence on Aneaetok Island to the north. Since this Island was initially more heavily contaminated than Rongelap, it was essential that we obtain data there comparable to those from Rongelap ... We still do not have the essential data on foodstuffs from Aneaetok Island..."
>
> "As you recall, the only restriction that we placed upon the return of the Rongelapese was that they should not eat land crabs since the last survey showed an unusually high amount of Strontium-90 in their soft tissues. ... (W)hen the last survey was made (July 1957) we made a strong point of collecting land crabs ... We still had not received the data by the early part of February 1958 ... Upon further request the data were transmitted to us, based on only two land crabs collected on Rongelap Island (and incidentally the two numbers of concentration in the muscle differing by a factor of 12)."

March 1958 Medical Survey of Rongelap People Four Years After Exposure to Fallout, Robert A. Conard, M.D. et al, Brookhaven National Laboratory
http://www.hss.energy.gov/healthsafety/ihs/marshall/collection/data/ihp1b/3543_a.pdf

> "These estimates showed that the body burden of Cs-137 had increased by a factor of 100 and of Sr-90 by a factor of 10 ... since the return to Rongelap." (page 33)

June 26, 1959, Letter from C.L. Dunham, M.D., Director of the Division of Biology & Medicine at the AEC to Trust Territory High Commissioner D. H. Nucker. NOTE: This three-page document cannot currently be accessed at the Department of Energy Marshall Island Document Collection website http://www.hss.energy.gov/HealthSafety/IHS/marshall/collection/

> "Samples of soil, plants and animals were carefully analyzed during the period 1954 to 1957 in order to evaluate the initial and long range hazards to humans. The findings indicated a need for a more searching analysis of the retention of fallout in soil and the rate of subsequent uptake and retention in land and water plants and animals including those used as human food."

> "A very unusual opportunity exists at Rongelap to study ecological relationships in a relatively undisturbed area ... The measurement of possible environmental imbalance caused by the fallout radioisotopes will contribute to estimates of long term hazards to human beings and to an evaluation of the recovery period following single nuclear detonations."

> "We do not feel that we know enough about the ecological effects of fallout isotopes to state flatly that no hazards will remain when the coconut crab problem is eased. We wish to continue this program until scientists are convinced that we understand enough about the natural processes of radioactive decay and ecological redistribution to safely deny further responsibility for conditions that may appear. This is likely to be many years in view of the paucity of information on long term genetic and other effects of radiation on marine organisms."

July 10, 1959, Letter to Dr. Charles L. Dunham, Director, Division of Biology and Medicine, AEC, from Robert A. Conard, M.D., Brookhaven National Laboratory
http://www.hss.energy.gov/healthsafety/ihs/marshall/collection/data/ihp1b/3786_.pdf

> "It was apparent that the Trust Territory officials do not have a grasp of the significance and importance of the medical surveys. For instance, I was surprised that Mr. Nucker (High Commissioner) did not appreciate the fact that the body burdens of the Rongelap people had increased since their return to Rongelap. They seem to take the attitude that we are merely carrying out a scientific experiment using the Rongelap people as 'guinea pigs.'"

October 1967 Proceedings of the Second Interdisciplinary Conference on Selected Effects of a General War, Volume II, Defense Atomic Support Agency, DASIAC Special Report 95 (comments attributed to Dr. Robert A. Conard, Brookhaven National Laboratory)
http://www.hss.energy.gov/healthsafety/ihs/marshall/collection/data/ihp1c/0282_a.pdf

> "During the first four years the exposed women showed some increase in miscarriages and stillbirths. About 41 percent of the births during that period ended in nonviable babies compared with only 16 percent in the unexposed group." (page 118)

> "We haven't carried out any specific studies of genetic effects, particularly in view of the generally negative result of the studies of Neal and Schull (Reference 17) and others in Japan. I'm sure there must be an increase in the mutant pool of these people and we have seen evidence of chromosome damage in the peripheral blood cells. We have cultured their blood and found an increase over the normal in the number of chromosomal aberrations. ... This was ten years after exposure." (page 120)

> "We know that chronic low dose exposure such as this will increase to some extent the incidence of leukemia and cancer of the skin and has been seen by radiologists over the years. But we are in a region that we really know very little about in regard to human effects. (page 134)

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STATEMENT OF THE HONORABLE MICHAEL KABUA
BEFORE THE HOUSE COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON ASIA, THE PACIFIC
AND THE GLOBAL ENVIRONMENT

U. S. House of Representatives

May 20, 2010

Submitted by the Honorable Iroij Michael Kabua

Iroij, Traditional Leader;

Senator, Republic of the Marshall Islands;

Elected Representative of the People of Kwajalein Atoll,

to the Nitijela (Parliament) of the Republic of the Marshall Islands

and Member of The Rongelap Atoll Local Government Council

Mr. Chairman, Members of this Subcommittee.

My name is Michael Kabua. I am a Senator elected to represent the People of Kwajalein Atoll. My brother, Imata Kabua, is the Iroijlaplap of Rongelap and I serve as a member of the Rongelap Local Government Council in his name.

As a traditional leader in the Marshall Islands, it is both my legal and moral responsibility to represent our people and to protect our lands to the best of my ability. The duty to protect the health and safety and to preserve the culture and lands of the Marshallese people is a solemn responsibility that I take very seriously.

As an elected official, as a traditional leader, and as a citizen of the Marshall Islands I wish to express my sincere gratitude and deep appreciation and the gratitude of all Marshallese to this Committee and to its Chairman for conducting this briefing on important issues affecting the Marshall Islands and its People. I am honored to offer this testimony as Iroij of Rongelap as well as Mejatto, Kwajalein, where the people of Rongelap now reside.

RONGELAP RESETTLEMENT[1]

The United States Government, through the Department of Interior, has informed the people of Rongelap that they are to return to their homeland within the next year as it is now safe to resettle. The assertion that it is safe is based on the understanding that 200 acres of the atoll has been treated and cleaned of irradiated soil. With the caveat that

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[1] Copies of the following are attached to provide further background and context to the complex issue of resettlement currently being faced by the People of Rongelap Atoll.

a. Letter to Honorable Anthony Babuta, Asst. Secretary for Insular Affairs, dtd October 17, 2010, from members of Congress;
b. Letter to Honorable H. Jurelang Zedekaia, President, Republic of the Marshall Islands, dtd March 15, 2010 from Senator Iroij Michael Kabua;
c. Letter to Honorable James Matayoshi, Mayor, Rongelap Atoll dtd March 29, 2010 from Nikolao I Pula, Director of Insular Affairs, Department of Interior; and
d. Letter to Honorable Iroij/Senator Michael Kabua, dtd March 30, 2010 from Marshall Island President Honorable Jurelang Zedekaia

their modified diet in Rongelap shall be a mixture of local and imported foods, the are being assured by United States authorities that their return to Rongelap has been certified safe by scientists. The underlying message in correspondence to the Mayor of Rongelap seems pretty clear: move back to Rongelap or face cutoff of support for the temporary community at Mejatto Island in Kwajalein Atoll.[2]

While no one can dispute the fact that the future of the Rongelap people lies in returning to the land and waters wherefrom they have taken sustenance for many, many centuries, as their Iroij I cannot agree to returning people to contaminated land and waters. I do not agree that the Rongelap clean-up program has been carried out successfully as defined by agreements between the governments of the United States, the Marshall Islands and Rongelap Atoll for the rehabilitation of Rongelap Atoll and resettlement of Rongelap Island. Nor do I agree that resettlement is being carried out in compliance with those agreements.

Resettling the people of Rongelap under rules severely restricting their ability to move about their homeland, or to gather food from their traditional sources, does not constitute sensible repatriation. As Iroij of the people of Rongelap I have had occasion to ascertain how they feel about being forced to return. The people of Rongelap want to go home, but not to a land where the future well-being of their children will be in jeopardy, and where they themselves cannot be assured of safety and security. Partial settlement necessary means they will remain as strangers in their own home.

The people of Rongelap witnessed the aborted resettlement of Bikini and no one can question their right to be apprehensive about returning to Rongelap under identical circumstances. The Rongelap people themselves lived through a similar nightmare in 1985. That Bikini mistake was a result of Interior's decision to repatriate the dispossessed population based on policy that failed to consider the radiation protection standards in conjunction with our traditional diet and cultural demands.[3] We do not wish to see history repeat itself.

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[2] Rongelap Islanders Loath to Return to Nuked Home, reprinted by Pacific Islands Report, Pacific Islands Development Program/ East West Center, University of Hawaii March 2, 2010, http://pidp.eastwestcenter.org/pireport/2010/March/03-02-08.htm , and attached hereto.

Moving people without due consideration for their traditional living patterns and community structures will replicate the problems of resettlement experienced in Enewetak, in the Bikini repatriation, and in Kwajalein.

I have utmost confidence that working together with the United States Government, we will find an amicable and humane solution to this decades-old dilemma, so that all of the People of Rongelap can return to a safe and healthy homeland. Working in close partnership - as our mutual history bespeaks - I have faith that we will be able to move ahead and into a more promising future.

NUCLEAR CLAIMS

As members of this Subcommittee are aware, as reflected in the testimony and submissions of others appearing at today's hearing, the U.S. Supreme Court recently affirmed a federal judge's finding that the Compact of Free Association has stripped the U.S. courts of jurisdiction to rule in our cases seeking just compensation for the damages to our lands and our people as determined by the Nuclear Claims Tribunal.

Many believe as I do that Marshall Islands are due damages as a result of the consequences of nuclear testing despite these legal rulings. Many believe it is now up to Congress to right these wrongs.[4]

In that regard, I urge the members of the subcommittee to take the first step toward a remedy, to support the introduction of legislation to allow the House Judiciary Committee to refer this matter to the Court of Federal Claims to consider the fairness and equity surrounding our claims that the nuclear testing program injured the people and damaged the lands of the Marshall Islands.

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[3] See, for example, Tommy F. McCraw, The Aborted Resettlement of Bikini Atoll, How and Why this Occurred, Letter to the Editor, Health Physics Society Journal, 1998.

[4] Marshallese Due Nuke Test Damages Despite Legal Ruling, Editorial, Honolulu Star Bulletin, April 6, 2010, attached hereto.

KWAJALEIN ATOLL

Finally, but not the least, I express my full support and endorse without any reservation the statement provided by my colleague, Senator DeBrum with respect to Kwajalein Atoll.

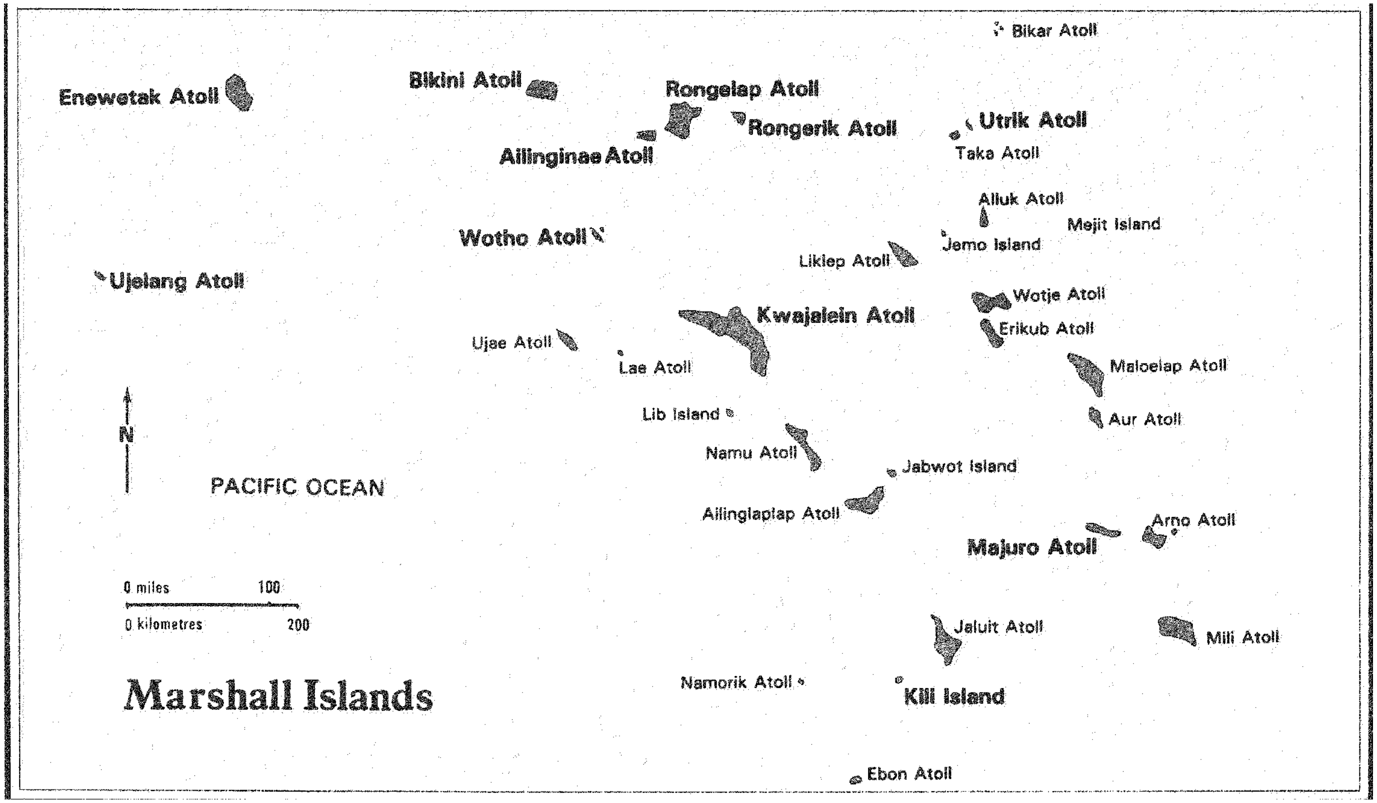
The new administration of the Republic of the Marshall Islands, under the leadership of our President, President Zedkaiah, has this week met with State Department representatives of the new administration of the United States, under the leadership of President Obama. The reports of the meetings are very encouraging. For the first time since the inception of the new Compact, we see the real possibility of a fresh approach that will bring about an amicable and mutually beneficial resolution of an impasse that has prevented culmination of a land use agreement for the continued use of Kwajalein by the United States.

CONCLUSION

As Iroij of People of the Marshall Islands, I am deeply grateful to this Subcommittee and especially to its Chairman for calling this hearing. Bringing us together in Washington D.C. this week has presented us with opportunities that we could not imagined possible. What happens next, however, will be the test of whether this has been a week of new beginnings or a week of dreams. I believe both the representatives of President Obama's Administration with whom we met want to make this a week of new beginnings just as much as those of us who are here representing the Marshall Islands. To make that a reality, however, both sides are going to need continued help and support of the Subcommittee on Asia and the Pacific, and of its Honorable Chairman, our friend.

In closing, I wish to express my appreciation for the opportunity to present this submission of my views of these important issues. Kommol Tata.

[NOTE: Additional material submitted with the preceding statement is not reprinted here but is available in committee records.]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Ailinginae Atoll
Alluk Atoll
Mejit Island
Wotho Atoll
Jemo Island
Liklep Atoll
Ujelang Atoll
Wotje Atoll
Kwajalein Atoll
Ujae Atoll
Erikub Atoll
Lae Atoll
Maloelap Atoll
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Kili Island
Marshall Islands
Ebon Atoll